By Mr. SPRINGER: The petition of D. W. New Kirk and 105 other citizens of the twelfth congressional district of Illinois, for the unconditional repeal of the resumption act, the retirement of the national-bank currency and the substitution therefor of legal-tender notes interconvertible with bonds, to the Committee on Banking and Currency.

By Mr. STEVENSON: The petition of W. O. Davis and others, of Bloomington, Illinois, for an amendment of the postal laws, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

MONDAY, *April* 17, 1876.

PRAYER.

Rev. BYRON SUNDERLAND, D. D., Chaplain to the Senate, offered the following prayer:

O Thou almighty and everlasting God, the Father of light, help us to see light in Thy light. When we are as men walking in darkness, be Thou our Guide. When we are as men that encounter judgment, be Thou our Adviser and Friend. We pray Thee be very specially nigh to Thy servant who presides in this place, and to Thy servants, the Senators, in the discharge of the high and solemn functions with which they are here now invested. May they not fail to see the right and to dispense justice for the confirmation of all that is good and for the welfare of the nation. Through Jesus Christ. Amen.

JOURNAL.

The Journal of the proceedings of Thursday last was read and approved.

PETITIONS AND MEMORIALS.

Mr. DAVIS presented the petition of Joseph Wheeler and 100 other citizens and workingmen of Mason County, West Virginia, praying that the existing tariff laws may remain undisturbed for the present; which was referred to the Committee on Finance.

Mr. BOGY presented the petition of the board of directors of the Merchants' Exchange of Saint Louis, Missouri, praying for the passage of the bill providing for the organization of the Signal Service Corps, &c.; which was referred to the Committee on Commerce.

Mr. DENNIS presented the petition of the Board of Trade and citizens of Georgetown, District of Columbia, and also of merchants and citizens of Washington, District of Columbia, praying Congress to make an appropriation of $50,000 for dredging the Georgetown and Virginia channel of the Potomac River, and removing rock therefrom between the Aqueduct and the Long Bridge; which was referred to the Committee on Commerce.

He also presented the petition of James T. Earle, William McKenney, Samuel I. Earle, and others, praying for an appropriation for the improvement of Corsica Creek, Maryland; which was referred to the Committee on Commerce.

Mr. HAMLIN presented the petition of J. H. Hamlin & Son, of Portland, Maine, praying that they may be allowed to change the name of the brig A. S. Pennell, registered in the district of Portland and Falmouth, Maine, to City of Moule; which was referred to the Committee on Commerce.

Mr. WALLACE presented a petition of citizens of Pittsburgh, Pennsylvania, praying for the passage of a law to regulate commerce and prohibit unjust discriminations by common carriers; which was referred to the Committee on Commerce.

He also presented a memorial of workingmen of Centre County, Pennsylvania, remonstrating against any change in the present tariff laws; which was referred to the Committee on Finance.

He also presented a petition of envelope manufacturers, printers, and other citizens of Pennsylvania, praying that the manufacture and sale of stamped envelopes may be discontinued by the Government; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of the Captains and Vessel Owners' Association of Philadelphia, Pennsylvania, praying for the repeal of the law providing for compulsory pilotage on coasting vessels; which was referred to the Committee on Commerce.

Mr. JONES, of Florida, presented the petition of William Curry, of Key West, Florida, praying that he may be allowed compensation for damage to certain property belonging to him in the city of Key West by the careening of the United States ship Pursuit in the year 1862; which was referred to the Committee on Claims.

Mr. CONKLING presented a memorial of the workingmen of Essex County, New York, remonstrating against any change of the present tariff laws; which was referred to the Committee on Finance.

He also presented five memorials of citizens of Saint Lawrence County, New York, remonstrating against the passage of any law allowing an American register to foreign-built vessels; which were referred to the Committee on Commerce.

He also presented two memorials of citizens of Detroit, Michigan, remonstrating against the passage of any law allowing an American register to foreign-built vessels; which were referred to the Committee on Commerce.

Mr. HOWE presented a joint resolution of the Legislature of Wisconsin, in favor of an appropriation for the completion of the improvements on the Fox and Wisconsin Rivers; which was referred to the Committee on Commerce.

He also presented a petition of citizens of Rock County, Wisconsin, praying for the immediate repeal of the resumption act, so called; which was referred to the Committee on Finance.

DISTRICT COURT OF WEST VIRGINIA.

Mr. EDMUNDS. I am instructed by the Committee on the Judiciary, to whom was referred the amendment of the House of Representatives to the bill (S. No. 472) changing the times of holding terms of the district court for the district of West Virginia to report, recommending that the Senate disagree to the amendment proposed by the House. As the bill merely relates to holding the terms of the court, I ask that it be considered now. I move that the Senate disagree to the House amendment.

The PRESIDENT *pro tempore*. The question is on disagreeing to the amendment of the House. The Secretary will report the amendment.

The CHIEF CLERK. The amendment of the House of Representatives was to strike out all after the enacting clause of the bill and insert the following:

That hereafter the district court of the United States for the district of West Virginia shall be held at the times and places following; but when any of said dates shall fall on Sunday the term shall commence the following Monday, to wit: At the city of Wheeling on the 1st day of March and the 1st day of September; at Clarksburgh on the 1st day of April and the 1st day of October; at Charleston on the 1st day of May and the 1st day of November; and at Martinsburgh on the 1st day of June and the first day of December; and all pending process, rules, and proceedings shall be conducted in the same manner and with the same effect as to time as if this act had not passed: *Provided, however*, That the terms of court hereby authorized to be held at Martinsburgh shall be void and of no effect unless all buildings and conveniences necessary to the holding of said courts shall be furnished by the proper authorities of the county of Berkeley free and clear of all costs and expense to the United States.

Mr. DAVIS. I regret that the committee has not been able to recommend the establishment of a court at Martinsburgh. In my judgment it would be economy on the part of the United States to establish a court there. I, however, have done my duty by trying to persuade the committee to think as I do on that point, and have been unable to accomplish that purpose; but as the bill is important, I will not make unreasonable objections to the disagreement recommended by the committee.

The PRESIDENT *pro tempore*. The question is on disagreeing to the amendment of the House of Representatives.

The amendment was non-concurred in.

REPORTS OF COMMITTEES.

Mr. MORRILL, of Maine, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 3128) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1876, and for prior years, and for other purposes, reported it with amendments.

Mr. BOUTWELL. I am directed by the Committee on the Revision of the Laws, to whom were referred certain propositions of amendment to the Revised Statutes, sent to that committee upon the ground that there were errors in the revision, to report a bill. The committee find that in these particulars the request is for new legislation. I therefore report back those proposed amendments in the form of a bill, and as they relate to commercial matters, I will ask its reference to the Committee on Commerce.

The bill (S. No. 742) to amend the Revised Statutes was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. HOWE, from the Committee on the Judiciary, to whom was referred a resolution of the Senate directing that committee to inquire into the expediency of repealing section 8, of chapter 2, title 1, of the Revised Statutes, reported a bill (S. No. 743) to amend section 8, chapter 2, title 1, of the Revised Statutes of the United States; which was read, and passed to the second reading.

Mr. LOGAN, from the Committee on Military Affairs, to whom was referred the bill (H. R. No. 2459) for the relief of Theodore F. Miller, late private Company G, Third Regiment Iowa Cavalry Volunteers, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. HITCHCOCK, from the Committee on Railroads, to whom was referred the bill (H. R. No. 1771) to declare forfeited to the United States certain lands granted to the State of Kansas in aid of the construction of railroads by act of Congress approved March 3, 1863, reported it with amendments.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the bill (S. No. 586) for the relief of Henry K. Kelly, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. BOOTH, from the Committee on Public Lands, to whom was referred the bill (S. No. 677) granting a site for an observatory to the trustees of the Lick Observatory of the astronomical department of the University of California, reported it with an amendment.

PAY OF P. B. S. PINCHBACK.

Mr. MITCHELL. The Committee on Privileges and Elections, having had under consideration the question as to the proper amount of compensation to be paid P. B. S. Pinchback, late a contestant for a

seat in this body, have instructed me to report the following resolution and recommend its adoption:

Resolved, That P. B. S. Pinchback, late a contestant for a seat in the Senate, from the State of Louisiana, be allowed an amount equal to the compensation and mileage of a Senator from the beginning of the term for which he was a contestant, up to the period of the determination of the contest by the Senate.

I move that the resolution lie on the table and that it, together with the written report which I submit, be printed.

The motion was agreed to.

NATIONAL AND STATE RIGHTS.

Mr. MORTON. Mr. President, I desire to give notice that I will on next Monday, if there be no unfinished business, ask the Senate to proceed to the consideration of certain resolutions which I offered at the beginning of the session declaring that the people of the United States constitute a nation and the true nature and character of the Government.

COUNTING OF ELECTORAL VOTES.

Mr. THURMAN. I rise merely to give notice that at the earliest time I can have opportunity I will ask the Senate to take up the motion submitted by me to reconsider the vote on Senate bill No., 1 to provide for and regulate the counting of votes for President and Vice-President and the decision of questions arising thereon, and I will ask the Senate to hear me for a very few minutes to give the reasons why I think the vote ought to be reconsidered.

IMPEACHMENT OF W. W. BELKNAP.

The PRESIDENT *pro tempore*. The Chair will at this time take occasion to say that, inasmuch as the bill authorizing the Presiding Officer to administer oaths has not become a law, if there be no objection the Chair will appoint a committee to wait upon the Chief Justice of the Supreme Court of the United States and request him to appear in the Chamber to administer the oath. Is there objection? The Chair hears none. The Chair appoints on that committee the Senator from Vermont [Mr. EDMUNDS] and the Senator from Ohio, [Mr. THURMAN.] They will now discharge that duty.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. G. M. ADAMS, its Clerk, announced that the House had passed the following bills; in which the concurrence of the Senate was requested:

A bill (H. R. No. 256) for the relief of Herman Hulman, of Terre Haute, Indiana;

A bill (H. R. No. 1765) respecting the limits of reservations for town sites upon the public domain;

A bill (H. R. No. 1947) granting to the city of Stevens Point, Wisconsin, a certain piece of land;

A bill (H. R. No. 2110) for the restoration to market of certain lands in the Territory of Utah; and

A bill (H. R. No. 3136) extending the time within which homestead entries upon certain lands in Michigan may be made.

The message also announced that the House requested the return from the Senate of the bill (H. R. No. 2799) to amend certain sections of titles 4852 of the Revised Statutes of the United States, concerning commerce and navigation and the regulation of steam-vessels.

The message also announced that the House had passed the following bills:

A bill (S. No. 34) to confirm pre-emption and homestead entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulations of the Land Department; and

A bill (S. No. 701) further to provide for the administering of oaths in the Senate.

BILLS INTRODUCED.

Mr. CONKLING asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 744) to restore to notaries public their authority in the Federal courts; which was read twice by its title, and, together with the accompanying memorial, referred to the Committee on the Judiciary.

Mr. HAMLIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. WINDOM asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 746) to amend section 4220 of chapter 3 of title 48 of the Revised Statutes of the United States, entitled "Regulation of commerce and navigation;" which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 747) to establish a post-route; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. KEY asked, and by unanimons consent obtained, leave to introduce a bill (S. No. 748) for the relief of James B. Guthrie; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

PAPERS WITHDRAWN.

On motion of Mr. BURNSIDE, it was

Ordered, That the petition and papers in the case of C. G. Frendenburg be taken from the files of the Senate.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. DAVIS and Mr. HAMILTON submitted amendments intended to be proposed by them to the bill (H. R. No. 3022) making appropriations for the construction, repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes; which were referred to the Committee on Commerce, and ordered to be printed.

Mr. SHERMAN submitted an amendment intended to be proposed by him to the bill (H. R. No. 3128) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1876, and for prior years, and for other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

IMPEACHMENT OF W. W. BELKNAP.

The Chief Justice of the United States, Hon. Morrison R. Waite, entered the Senate Chamber, escorted by Messrs. EDMUNDS and THURMAN, the committee appointed for the purpose.

The PRESIDENT *pro tempore*. The hour of twelve o'clock and thirty minutes having arrived, in pursuance of rule the legislative and executive business of the Senate will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The Chief Justice took a seat by the side of the President *pro tempore* of the Senate.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will make the opening proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William W Belknap, late Secretary of War.

The PRESIDENT *pro tempore*. The Secretary will now call the names of those Senators who have not been sworn, and such Senators as they are called will advance to the desk and take the oath.

The Secretary proceeded to call the names of the Senators who had not been heretofore sworn; and the Chief Justice administered the oath to Senators ALLISON, BURNSIDE, CAPERTON, CHRISTIANCY, CONKLING, CONOVER, DENNIS, GOLDTHWAITE, HOWE, JONES of Nevada, MORRILL of Maine, RANSOM, and ROBERTSON.

On motion of Mr. EDMUNDS, it was

Ordered, That the Secretary inform the House of Representatives that the Senate is in its Chamber and ready to proceed with the trial of the impeachment of William W. Belknap; and that seats are provided for the accommodation of the members.

The PRESIDENT *pro tempore*. The Secretary will invite the House accordingly.

At one o'clock p. m. William W. Belknap entered the Senate Chamber, accompanied by his counsel, Hon. Jeremiah S. Black, Hon. Montgomery Blair, and Hon. M. H. Carpenter, who were conducted to the seats assigned them in the space in front of the Secretary's desk on the right of the Chair.

At one o'clock and two minutes p. m. the Sergeant-at-Arms announced the managers on the part of the House of Representatives.

The PRESIDENT *pro tempore*. The managers will be admitted and conducted to seats provided for them within the bar of the Senate.

The managers were conducted to seats provided in the space in front of the Secretary's desk on the left of the Chair, namely: Hon. SCOTT LORD, of New York; Hon. J. PROCTOR KNOTT, of Kentucky; Hon. WILLIAM P. LYNDE, of Wisconsin; Hon. J. A. MCMAHON, of Ohio; Hon. G. A. JENKS, of Pennsylvania; Hon. E. G. LAPHAM, of New York; and Hon. GEORGE F. HOAR, of Massachusetts.

Mr. Manager LORD. Mr. President, in accordance with the invitation extended, the House of Representatives has resolved itself into a Committee of the Whole and will attend upon this sitting of this court on being waited upon by the Sergeant-at-Arms.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will wait upon the House of Representatives and invite them to the Chamber of the Senate.

At one o'clock and five minutes p. m. the Sergeant-at-Arms announced the presence of the members of the House of Representatives, who entered the Senate Chamber preceded by the Chairman of the Committee of the Whole House, (Mr. SAMUEL J. RANDALL, of Pennsylvania,) into which that body had resolved itself to witness the trial, who was accompanied by the Speaker and Clerk of the House.

The PRESIDENT *pro tempore*. The Secretary will now read the minutes of the sitting on Wednesday the 5th instant.

The Secretary read the Journal of proceedings of the Senate sitting for trial of impeachments of Wednesday April 5, 1876.

The PRESIDENT *pro tempore*. The Secretary will now read the return of the Sergeant-at-Arms to the summons directed to be served.

The Secretary read the following return appended to the writ of summons:

The foregoing writ of summons addressed to William W. Belknap and the foregoing precept addressed to me were duly served upon the said William W. Belknap by delivering to and leaving with him true and attested copies of the same at No. 2022 G street, Washington City, the residence of the said William W. Belknap, on Thursday the 6th day of April, 1876, at six o'clock and forty minutes in the afternoon of that day.

JOHN R. FRENCH,
Sergeant-at-Arms of the Senate of the United States.

The PRESIDENT *pro tempore*. The Chair understands that Rule 9 will be suspended for reasons already stated, and the Chief Justice will now administer the oath to the officer attesting the truth of this return.

The Chief Justice administered the following oath to the Sergeant-at-Arms.

I, John R. French, do solemnly swear that the return made by me upon the process issued on the 6th day of April, by the Senate of the United States, against W. W. Belknap, is truly made, and that I have performed such service as therein described: So help me God.

The PRESIDENT *pro tempore*. The committee will please escort the Chief Justice to the Supreme Court room.

The Chief Justice retired, escorted by the committee, Mr. EDMUNDS and Mr. THURMAN.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will now call William W. Belknap, the respondent, to appear and answer the charges of impeachment brought against him.

The SERGEANT-AT-ARMS. William W. Belknap, William W. Belknap, appear and answer the articles of impeachment exhibited against you by the House of Representatives.

Mr. CARPENTER. Mr. President, William W. Belknap, a private citizen of the United States and of the State of Iowa, in obedience to the summons of the Senate sitting as a court of impeachment to try the articles presented against him by the House of Representatives of the United States, appears at the bar of the Senate sitting as a court of impeachment and interposes the following plea; which I will ask the Secretary to read and request that it may be filed.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } Upon articles of impeachment of the House of
vs. } Representatives of the United States of
WILLIAM W. BELKNAP. } America, of high crimes and misdemeanors.

And the said William W. Belknap, named in the said articles of impeachment, comes here before the honorable the Senate of the United States sitting as a court of impeachment, in his own proper person, and says that this honorable court ought not to have or take further cognizance of the said articles of impeachment exhibited and presented against him by the House of Representatives of the United States, because, he says, that before and at the time when the said House of Representatives ordered and directed that he, the said Belknap, should be impeached at the bar of the Senate, and at the time when the said articles of impeachment were exhibited and presented against him, the said Belknap, by the said House of Representatives, he, the said Belknap, was not, nor hath he since been, nor is he now an officer of the United States; but at the said times was, ever since hath been, and now is a private citizen of the United States and of the State of Iowa; and this he, the said Belknap, is ready to verify; wherefore he prays judgment whether this court can or will take further cognizance of the said articles of impeachment.

WM. W. BELKNAP.

UNITED STATES OF AMERICA,
District of Columbia, ss:

William W. Belknap, being first duly sworn on oath, says that the foregoing plea by him subscribed is true in substance and fact.

WM. W. BELKNAP.

Subscribed and sworn to before me this 17th day of April, 1876.

DAVID DAVIS,
Associate Justice of the Supreme Court of the United States.

Mr. CARPENTER. Mr. President, Judge Jeremiah S. Black, Hon. Montgomery Blair, and myself also appear as counsel for Mr. Belknap.

The PRESIDENT *pro tempore*. The Secretary will note the appearance of the respondent and the presence of the counsel named.

Mr. Manager LORD. Mr. President, the managers pray a copy of the plea that has been filed, and the House of Representatives ask time to consider what replication to make to the plea of William W. Belknap, late Secretary of War, to the jurisdiction of this Senate sitting as a court of impeachment.

The PRESIDENT *pro tempore*. There is no objection, I believe, to the filing of the plea of the respondent. The Chair hears no objection; it will be filed. The managers will please reduce their motion to writing.

Mr. Manager LORD. We will do so.

The PRESIDENT *pro tempore*. The Chair will state to the officers and members of the House of Representatives, that if it is to their convenience to withdraw at any time, they are at liberty to do so.

The House of Representatives then withdrew.

Mr. Manager LORD. Mr. President, I have sent to the Secretary the request of the managers.

The PRESIDENT *pro tempore*. The managers submit a motion, which will be read.

The Chief Clerk read as follows:

The managers on the part of the House of Representatives request a copy of the plea filed by W. W. Belknap, late Secretary of War, and the House of Representatives desire time until Wednesday, the 19th instant, at one o'clock, to consider what replication to make to the plea of the said W. W. Belknap, late Secretary of War.

The PRESIDENT *pro tempore*. Senators, you have heard the motion of the managers. Those who concur will say ay; those who nonconcur will say no, [putting the question.] The ayes have it; the Senate so orders.

The PRESIDENT *pro tempore*. The Chair will ask the gentlemen counsel for the respondent if they will be ready to proceed at the time named in the motion submitted by the managers?

Mr. CARPENTER. That will depend entirely upon what the managers do. We cannot anticipate. If they do what we suppose they will do, we shall be ready. If not, we shall have to consider what we will do next.

The PRESIDENT *pro tempore*. Have the managers on the part of the House of Representatives anything further to propose?

Mr. Manager LORD. We have nothing further to propose at this time. With the leave of the Senate we beg permission to retire.

The PRESIDENT *pro tempore*. Leave is granted. Have counsel for the respondent anything further to propose?

Mr. CARPENTER. Nothing, Mr. President.

The managers and counsel thereupon withdrew.

The PRESIDENT *pro tempore*. What is the pleasure of the Senate?

Mr. EDMUNDS. I move that the Senate sitting for the trial of the impeachment adjourn until Wednesday next, at half past twelve o'clock.

The motion was agreed to; and the Senate sitting for the trial of impeachment adjourned to Wednesday, the 19th instant, at twelve o'clock and thirty minutes p. m.

REPAVEMENT OF PENNSYLVANIA AVENUE.

The PRESIDENT *pro tempore*. The Senate resumes its legislative business.

Mr. SHERMAN. I move that the Senate proceed to the consideration of the Calendar.

Mr. INGALLS. I suggest that the Senate proceed with the consideration of the unfinished business, being Senate bill No. 680, for the repaving of Pennsylvania avenue.

Mr. DORSEY. I believe the unfinished business is the bill for paving Pennsylvania avenue.

The PRESIDENT *pro tempore*. The bill (S. No. 680) authorizing the repavement of Pennsylvania avenue is now before the Senate as in Committee of the Whole. The pending question is on the amendment of the Senator from Delaware, [Mr. BAYARD,] which will be read:

The CHIEF CLERK. In section 3, line 7, after the word "repair," it is proposed to insert:

The cost of paving the intersections of all streets and avenues and all parks lying and abutting upon said avenue to be paid out of the general revenue of the District, except the portions of such intersections lying between the tracks of the said railroad company and two feet on each side thereof, which shall be paid by the said railroad company. The cost of the said pavement lying between the Botanic Garden and a line two feet outside of the westerly side of the said railroad tracks to be paid by the United States; and, after the aforesaid deduction, the residue of the cost to be as follows:

Mr. DORSEY. I think that amendment is entirely just and equitable to the property-holders on Pennsylvania avenue, who a few years ago paid nearly one-half the entire cost of paving Pennsylvania avenue. This amendment lessens the burden on them very considerably.

Mr. LOGAN. I do not precisely understand the amendment. Does it mean that the paving of the Avenue opposite the Botanic Garden shall be paid entirely by the Government?

Mr. BAYARD. On the side next to the garden, the space between the Government lots and the westerly line of the railroad track. The Government owns that property.

Mr. LOGAN. But on the opposite side, how is it?

Mr. BAYARD. It is expressly stated that it is from the side of the curb next to the Botanic Garden up to a line two feet west of the side of the railroad track. It is meant that the Government shall pay for the paving of the whole of that portion.

Mr. LOGAN. I see. Then on the opposite side of the railroad track the cost of the paving would be paid one-third by the Government, one-third by the property-holders, and one-third by the District. I merely suggest that if the Government pays for all on the west side of the railroad, why should not the Government be exempt on the east side of the railroad?

Mr. WEST. It only pays, according to the amendment, between the Botanic Garden and the railroad; it has nothing to do with paying on the other side.

Mr. LOGAN. I beg the Senator's pardon; it has to do with paying on the other side under this bill; it pays one-third on the other side. If it is right for the Government to pay all on the side next to its own property, then it is equally just that the District and the property-holders should pay all on the other side. It is not just that the Government should pay all on one side and one-third of the balance on the other side. That certainly is not equal and just.

Mr. BAYARD. The Senate will see that it is placing the obligation of the Government in this act precisely on the basis of the private citizen. I do not hold that that exists. I do not mean to say that there is any principle connected with this assessment of the cost of one-third to the Government, one-third to the District of Columbia, and one-third to the private property-holders on the Avenue; but I merely say that it is an inequitable assessment growing out of the fact that already the cost to the property-owners along the Avenue for the very defective pavement laid down in 1871 has been very great, and my only object in offering this amendment was to diminish the cost of this pavement to them. The Senate will see that the bill in this respect is not based on any principle of natural equity. There is no rule in regard to this one-third. I only considered that it was reducing their share of this great expense to such proportion as they ought properly to bear. If we made them pay the same proportion of this proposed pavement that we made them pay in 1871, the cost of the two combined would amount to about $54.58 per front foot of all their property; and that occurred to me to be a very crush-

ing tax. For the sake of limiting their expense I propose that they should bear the proportion which I have suggested. There is no basis for that beyond a general equitable assessment.

The Senate knows as well or better than I do that there has been a rather undefined understanding that the Government of the United States should keep in repair thoroughly all the avenues, leaving the people here to take care of the cross-streets. If such a rule ever existed it has never been carried out precisely. On the contrary they have assessed the property-holders on these wide avenues just as much as they have on the side streets. Nor do I mean to say that if we had abided by any such rule it would have led to any better results to property-owners under the unrestrained system of improvement which we lately witnessed all over this District and the pavement of streets far beyond the presence of any buildings. There is no more reason why the property-owners on the side opposite the Botanic Garden should pay more for paving the street on their side than the other property-owners pay on other portions of the Avenue.

Mr. LOGAN. Certainly not.

Mr. BAYARD. I admit that by making the Government pay the whole of the frontage along the Botanic Garden we do undoubtedly increase the Government's proportion. I am not certain that the whole work ought not to be done by the Government of the United States.

Mr. LOGAN. I understand the Senator's proposition; and, according to his idea of it, his proposition is fair and proper; but I beg leave to differ on a question of principle. There is no rule that I know of laid down in the government of cities in reference to pavements or other public works that will require a larger percentage to be paid by one set of property-owners than by others on the same street. The Government of the United States, so far as it is assessed to pay for the pavement of streets, stands precisely in the same situation to the law that an individual does; and the very moment that you depart from the principle that the Government stands in the same relation with individuals as property-owners, so far as assessment on property is concerned, then you leave it a wide open sea, unguided, undirected by any line of principle whatever, to be assessed merely at the will and dictation of a majority of the Senate or House. That certainly is not the rule as applicable to assessments in any place in this country. I agree that the Government of the United States, where it owns property fronting upon any street or avenue or side street, should pay the assessment for paving, renewing, or mending that anybody else would pay who owned the same amount of property. That is the true principle, in my judgment, to regulate the assessment.

Now, if the Government of the United States pays for the entire pavement in front of the Botanic Garden of one-half of the width of the street, (which is certainly going beyond the principle that would govern in reference to assessments,) it should be exempt from paying any proportion on the other side of the railroad track, on the east side of the street. If it pays half of the paving of the whole street somebody else should pay the other half; because that half of the assessment itself is a greater proportion than is assessed under any rule upon any citizen. I am willing in a liberal spirit to say that the Government shall pay one-half, or pay under the rule of the bill up to within two feet of the railroad line; but then let the Government be exempt from its third on the opposite side of the track. It is no heavier on the property-owner who has a frontage on the Avenue. He pays but his one-third any how. If you pass this proposition he is still assessed the one-third and pays that. Let, then, the other two-thirds on that side of the street, not on the whole street, be paid by the District. That would leave the Government of the United States a sharer in the amount paid for the pavement to a greater extent than other property-holders.

In reference to the side streets, while I am up I will give the reason, as I understand it, for the rule adopted. Property, for instance, fronts on the Avenue and at the same time that property fronts on a side street. Why is it that the property fronting on the Avenue and the side street pays a greater assessment than the inside property of a block that only fronts on the Avenue? The same principle that governs in all other cities must govern in this. The interior property of a block has but one frontage; it is less valuable than the property that has two fronts. The property fronting on the Avenue and on a side street, called corner property, has a frontage on the side street and also on the Avenue. Having two fronts, the rule of assessment would assess that property higher, not higher on the front upon the Avenue, but higher taking it altogether, because it pays for the two frontages, the property being more valuable on that front, the value of the property being increased in the same proportion by paving the side street that it is by paving the Avenue. That is the reason for it.

When we lay an assessment on any principle or any rule of reason, or right, or justice, then we must establish that rule and stand by it. This is a greater assessment than the Government has paid heretofore; but so far as I am concerned I shall make no objection to it, provided the Government is excluded from paying the one-third on the other side of the Avenue. That would be just and fair, in my judgment. I will say to the Senator from Delaware that if his amendment is adopted, unless that provision shall be added that the Government shall be exempt on the other side of the railroad, I will, when we come down to the clause which provides that one-third shall be paid by the United States and out of any money in the Treasury not otherwise appropriated, in lines 16 and 17, move to strike out that portion so far as it applies to the side of the street opposite the Botanic Garden. If the Senator will agree to that, I shall have no objection to his amendment.

Mr. BAYARD. I have not the least objection to that. I suppose the reason why this amendment was suggested to me was simply that here was a long stretch of about eight hundred feet owned entirely by the Government.

Mr. LOGAN. I know it is.

Mr. BAYARD. The object clearly was to make the Government pay more there, and the individual owners pay less; but if the Senator thinks there is a principle involved in it, I do not know that I shall object to a modification. I do not see that the difference would be great, because under the bill the Government as an owner would pay a third and its proportion of the remainder is a third, and the other third is thrown on the District of Columbia.

Mr. LOGAN. But it makes it balance because the Government as it stands would pay only one-third of the whole. Now you make it pay half for part of the distance and add the other third to the District of Columbia. It will equalize it if you do what I propose. The Government will still pay more than was originally intended under the bill, one-third more anyhow if you agree to the amendment I suggest.

Mr. BAYARD. I comprehend the suggestion of the Senator from Illinois, and his proposition would be reached by amending the amendment by striking out the words "the cost of the said pavement lying between the Botanic Garden and a line two feet outside of the westerly side of the said railroad tracks to be paid by the United States." If those words were striken out, it would then leave the Government to pay its proportion. I have no objection to that.

Mr. LOGAN. My objection to the Senator's original proposition is that it does away with the rule and appropriates just what we choose.

Mr. BAYARD. I have no objection to the amendment being modified in the way I have stated, and I will accept that proposition.

The PRESIDENT *pro tempore*. The amendment will be so modified.

Mr. FRELINGHUYSEN. I want to call the attention of the Senator from Delaware to a part of his amendment. As I understand his amendment, it provides that the pavement in front of the parks shall be paid out of the general treasury of the District of Columbia. The Government of the United States owns those parks. It takes charge of them. The pavement is but an incident to the park. On the principle which is so well stated by the Senator from Illinois, that property-owners should pave in front of the property they own, that pavement ought to be paid for by the United States and not by the citizens of the District of Columbia. These parks are theirs, because this is the capital and they are there to beautify the city. The Government of the United States recognizes that; it spends large sums of money in keeping them in repair. I think that amendment ought to be made to the amendment of the Senator from Delaware.

Mr. LOGAN. The proposition I make affects the parks the same as anything else. The principle ought to govern property owned by the Government, as, for instance, the parks. Under the rule laid down in the bill, the Government pays one-third and the property-owner pays one-third; and the Government, owning the property, pays two-thirds, and the District the balance. That is the bill as it stands now.

Mr. FRELINGHUYSEN. But this amendment provides——

Mr. LOGAN. It provides that the Government shall pay all.

Mr. FRELINGHUYSEN. No; it provides that in front of these parks the cost of paving shall be paid by the District, which ought not to be.

Mr. LOGAN. I am not speaking of the amendment; I am speaking of the bill. I am speaking in opposition to the principle laid down in the amendment; but I speak of the bill. As the bill stands now, the Government being a property-owner, so far as the parks are concerned, it pays as property-owner and as Government too.

Mr. DORSEY. This whole question was gone over with great thoroughness in the committee, and we there had a schedule of the property owned by the Government between the northwest gate of the Capitol and the Treasury building. We considered the manner in which the pavement was paid for in 1871; and the best judgment of the committee was that we had better put it in a lump, and then divide it into thirds: let the District of Columbia pay one-third, the Government one-third, and the property-holders owning property on the Avenue one-third. I think after all, now, that is the easiest and the best way.

Mr. WEST. In connection with what the Senator who has just taken his seat has said, I should like to call the attention of the Senate to the mode in which that expense would be distributed between the various parties who are to pay their one-third. Taking the estimate of the engineer officer and the limitation prescribed by this bill of $4.60 a yard, you will find that the total sum amounts to $312,295, exclusive of the amount that is to be paid by the railroad company. Under the provisions of the bill as advocated just now by the Senator from Arkansas, the District will have to pay $104,098, and the Government $104,098, and private property-owners $104,098, making a tax upon all the individual frontage of real estate upon the line of the Avenue on both sides of $15.27 a foot—a rate exorbitant and out of proportion to all the taxes to which other property in the District has been subjected. Without considering the fact that this very property has within five years been further and earlier subjected to

a still greater tax, this fact should induce us to have some consideration in the direction suggested by the Senator from Delaware.

But the proposition of the Senator from Delaware is not altogether equitable to the District, and his attention has been called to that by the Senator from New Jersey. He proposes to tax the District at large for paving in front not only of public parks, but reservations; the market space, for instance, which is retained by the Government. The proposition of the Senator from Illinois would make it still worse for the District. Let me show what will be, in figures, the various proportions to be paid under the amendment of the Senator from Delaware. Taking his amendment to leave the intersections to be paid by the District, we have 2,776 feet; the park spaces, 2,188 feet; total cost to the District of Columbia out of $312,000, $172,000. Senators will please notice that there is no mention made either in the debates so far, or in any amendment that has been suggested, of the market reservation, but including that as the property of the Government and not included by the proposition of the Senator from Delaware the Government will have to pay $85,000 for the Government reservations and the Botanic Garden, and the private property-holders will pay $54,000.

Mr. LOGAN. If the Senator will allow me, does he claim that in front of the market property the Government ought to pay the tax?

Mr. WEST. I have not claimed any such thing. I have only noted the fact that it belonged to the Government.

Mr. LOGAN. Does the Senator say the Government ought to pay that tax?

Mr. WEST. I do not. I call attention to the fact that it belongs to the Government, and nobody has said anything about it yet.

Mr. LOGAN. It belongs to the Government in this way. It is in the hands of a corporation here for ninety-nine years, I believe. The Government has nothing to do with it in the world, and the tax ought to be assessed on the parties who hold the property, for the reason that the Government receives no benefit whatever from it.

Mr. WEST. Then the Senator from Illinois ought to be very much obliged to me for calling his attention to it.

Mr. LOGAN. The Senator from Louisiana did not first call my attention to it; I noticed that it was left without mention in the bill. My attention had been called to it before. I was talking to the Senator from Arkansas [Mr. DORSEY] about it before the Senator from Louisiana mentioned the subject. I think the corporation ought to pay the tax themselves.

Mr. WEST. I was calling attention to what would be the practical result upon property in this District and the payments out of the Treasury of the United States, as proposed by the Senator from Delaware. I will recur to that again and show what the figures are. There will be $172,000 to be paid by the District proper.

Mr. ALLISON. Will the Senator from Louisiana allow me to call his attention to the fact right there that this $172,000 is to be paid out of the District treasury, so that the United States will probably contribute by appropriation from one-half to one-third of it?

Mr. WEST. Why?

Mr. ALLISON. That is the custom. We have done so in the last year. We contributed a million and fifty thousand dollars last year to the general expenses.

Mr. WEST. Whenever that shall occur, then I presume the Senator's suggestion would be proper. These are the facts. I do not think the Senate ought to agree exactly to the proposition when they know what would be the results. The District will be required to pay $172,000, the Government of the United States $85,000, and the private property-holders on the line of the street $54,000. That is all there is of it. If the Senate is prepared to put that tax upon the District at large, which is out of all proportion to its interest in the property, I shall not for myself be in favor of such a proposition.

Mr. DORSEY. Will the Senator from Louisiana allow me to interrupt him?

Mr. WEST. Yes, sir.

Mr. DORSEY. The Senator is in error in regard to the manner in which the general revenue of the District is raised. It is not obtained by taxation altogether, but only in part. I think the last year a very small part was obtained in that way. Congress last year appropriated $1,500,000, not all but a large portion of it to go to the general revenue of the District, out of which this expenditure will be borne. One-third is to be paid in this way and another third charged to the property on the Avenue. I think the Senator from Louisiana must be very much mistaken in his estimate that the one-third proposed in the bill, as it now stands, to be charged to the property will amount to $15 per front foot. There are 711,000 front feet on the Avenue, and $15 a front foot would make a very large sum of money. I have not made a mathematical calculation, but I am very sure the Senator is in error.

Mr. WEST. A gentleman who has not made a mathematical calculation says that one who has made a mathematical calculation is in error. I have here a diagram which was handed me, and I have looked over it with a great deal of attention, in which the total private frontage on that street is 6,818 running feet. The city intersections and the park spaces, according to the proposition of the Senator from Delaware, are 4,964 feet, and the United States reservations and the Botanic Garden 1,330 feet. If, as the Senator says, this work will be paid for by the Government of the United States out of the contribution that the Government is to make for the support of this District, let us get at it at once, then, and charge this paving to the Government, so that we shall have no complication on this score hereafter, and the equanimity of the Senator from Iowa will not be disturbed.

I only wish to direct attention to the fact that under this amendment the District is to pay $172,000, the Government $85,000, and the private property $54,000. The Senator from Arkansas has been a good deal misled by the report made by the board of public works. The $9.55 per running foot that is alleged to have been charged upon this property is not within $10 of the amount per foot, as the Senator from Delaware knows, because he showed us the bills here. His is the right calculation. It is very easy for any one to sit down with a pencil and make it in two minutes. It is $19 instead of $9.

Mr. DORSEY. I will not undertake to controvert the official report of the engineer of this District. I supposed that the man competent to act as the chief engineer of this District was competent to determine what the cost of the pavement laid down on Pennsylvania avenue was. I simply took his figures, and I assumed that they were correct. At all events they are over his official signature and over the official signatures of the commissioners of the District.

Mr. WEST. The Senator does not certainly suppose that I am arraigning him or holding him accountable for the mistake of a man upon whose official position he relies. If a mistake has been made, certainly we ought to know it; and we do know, first from the tax bills (and the Senator can compute from them for himself) that the Senator from Delaware has produced here, Pennsylvania avenue is one hundred and ten feet between the curbs. Twenty feet of space are taken up. In my opinion it would be more equitable—and I will show the Senate the results of this proposition—to charge to the District at large the intersections of the streets. Beginning first with the railroad company, and charging it its share; then charge the District with the intersections; then charge the Government with the reservations and the parks; and then let the private property pay one-third of the remainder. A very trifling amendment to the proposition of the Senator from Delaware would accomplish that object.

This will be the result in figures: The District property of Washington at large will pay $120,000 of the expense; the Government of the United States will pay $137,000; and the private property on the line of the street will pay $54,000. I cannot offer an amendment now, because there is an amendment of the Senator from Illinois pending to the amendment of the Senator from Delaware. Under the proposition of the Senator from Illinois the District will pay a great deal more money than I have stated, and I do not think the amendment to the amendment ought to be adopted.

Mr. BAYARD. The proportion of the expense to be borne by the Government of the United States, the District of Columbia, and the private property is agreed upon by the Senator from Louisiana [Mr. WEST] and myself. In looking over the figures which have been handed me, I find that he rather increases the total cost of this work, and there is also some slight discrepancy between us as to the distances of frontage; but it does not alter the proportion of payment. I am inclined to think that there should be an amendment to the amendment which I have offered that would substantially produce this result: that the District government shall pay for the intersections of the streets and avenues abutting upon Pennsylvania avenue, and also a small amount for alleys, amounting to about ninety feet, and also pay one-third of the cost of paving upon private frontages; that the United States shall pay for paving eight hundred feet in front of the Botanic Garden, for the reservations and park spaces, and also one-third of the cost of paving in front of the private property; and that the private property shall pay the remaining one-third. Upon the supposition that the entire work will cost $303,287.50, it would leave the government of the District to pay $118,165.77; the United States Government to pay $133,246.53; and the private property-holders to pay $51,875.19. Under the bill as reported by the Senator from Arkansas there would be the same amount to pay, distributed in equal proportions between these three parties, leaving $101,095.83 to be borne by each.

There seems to be a concurrence between the Senators who have discussed this subject that it would be inequitable to throw upon the private property-holders along Pennsylvania avenue so large an expense as one-third of the gross amount, and that they should be relieved to some extent. That we should let the Government bear only its fractional proportion of its share of pavement in front of the Botanic Garden is to my mind quite clear. There is no principle at the basis of the division of this cost. It is a purely equitable and arbitrary arrangement on the part of Congress as to what further taxation for the sake of improvement they will put upon this District and upon the property-owners. As has been said and shown here to the Senate, for a wooden pavement exceedingly expensive and luxurious, which was not desired by these property-holders, which they did not vote for, which they had no opportunity of voting for, which they did not contract for, and which they had in a great part to pay for, a tax already, within five years, of nineteen dollars and some cents a front foot on their property has been laid. The present bill would add about $15 more, which it seems by the common opinion of the Senate must be regarded as exceedingly onerous and harsh.

I am quite willing that the amendment offered by me should be modified in any way that will produce the result which I originally

contemplated, and which was a relief to these people of the cost of a large portion of this expensive work. If I were a property-owner upon the Avenue, I do not know that I would desire any such improvement as this now contemplated. I must say that I do not think it is in proportion to their use of the property. This Avenue is laid down for the convenience of non-resident citizens of the United States. It is an avenue that is in every sense of the word the avenue of the Federal Government, and those who traverse it and use it are in the proportion probably of 95 per cent. non-residents of the District of Columbia. Therefore it would seem utterly unreasonable to condemn the property-holders, who form so small a fraction of those who have the use of this Avenue, to pay any such proportion of its cost.

I believe I agreed to accept the modification of the Senator from Illinois about the Botanic Garden. That is not a very important part of this expense. It is about eight hundred feet, and the difference between the amount here fixed and the third of the Government under the bill would not be a matter of very great importance. Although I agreed to accept his modification, I am prepared to insist on the amendment as I first offered it, but I am quite willing that the Senator from Louisiana [Mr. WEST] should offer his amendment.

Mr. EATON. Before the Senator from Louisiana suggested the substitute, I was about to propose an amendment to the amendment of the Senator from Delaware. As he very properly observed, there is no precedent in the case. It is an arbitrary act of Congress at all events which determines the relative amount of expenditure. I understand the expenditure will be in round numbers about $300,000 over and above what the railroad company will pay for its own paving. In my judgment the United States should pay, not a third, but a half of it. Let the United States pay one-half that amount, let the District pay one-fourth, and the private property-holders on the Avenue one-fourth. That would make $75,000 to be divided among the property-holders and $75,000 to be laid on the District generally. It seems to me that is fair and equitable. This is the avenue of the United States, and I think it ought to pay one-half the expenditure for this pavement.

Mr. LOGAN. Will the Senator allow me to suggest to him what the result will be if you establish that principle, if it is a principle? I cannot see any principle in it.

Mr. EATON. Nor I.

Mr. LOGAN. Suppose you establish that precedent that the Government shall pay one-half the cost of paving Pennsylvania avenue, after that is paid a great many other streets and avenues here which are in the same condition nearly will need paving; and what principle will you go on when you pave the other streets and avenues? The same?

Mr. EATON. If my honorable friend desires an answer, I would answer by saying that when the subject should come before me I would take such action upon it as I deemed advisable. I regard this avenue as different from K street, or A, or I, or L street. It is the great public avenue of the country. Therefore I would adopt the proportion I have suggested to-day for this purpose.

Mr. LOGAN. Although you denominate Pennsylvania avenue as of great importance, there are other avenues in this city that are very nearly as important as this Avenue—quite a number of them. Are they to be paved? If so, some principle must regulate the Government. It is well known to all who legislate that when you once establish a precedent for a thing, it is very hard to get rid of it. There has been difficulty about this thing of paving these streets for a number of years, and each year there is an encroachment made on the Treasury of the United States. There seems to be a disposition, in other words, in legislation here to levy taxes on the people outside of the city to do that which the people of the city themselves ought to do. That is the whole of it. Taxation is levied on your constituents and mine to do that which should be done by the people here. It is not governed by any principle that is laid down in any city in the world. I ask Senators on what principle they can so act?

If the Government of the United States pays its proportion according to the property its owns, that is all that can be asked of the Government to do and all that upon any just basis or principle whatever it can be asked to do. All that your constituents and mine should be asked to do is to contribute their proportion, so far as Government property is concerned, and let each other citizen of the town contribute his proportion the same as citizens who do not live here. I ask the Senate upon what principle it is, on what rule of justice or equity, that they ask my constituents to contribute the same amount to paving the streets of Washington City that they ask the citizens of Washington City to contribute—people who never travel these streets? Sir, the true rule for us to be governed by is to assess the Government of the United States in proportion to the amount of property it owns. Then we have a rule by which we are guided. Whenever we deviate from that, we are governed by no principle of justice, economy, or equity. I have heretofore in this Senate and in the other House opposed propositions of this kind time and again on the very ground I state to-day, that you cannot justify them upon any rule of justice or equity. Unless you can find a rule by which you can justify your action, it is wrong.

Mr. INGALLS. Mr. President, having been called from the Chamber temporarily, I beg to know the condition of the pending question. What amendment is now before the Senate?

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Delaware [Mr. BAYARD] as modified at the suggestion of the Senator from Illinois, [Mr. LOGAN.]

Mr. INGALLS. I ask to have it reported.

The PRESIDENT *pro tempore*. The Chair understands that the Senator from Connecticut [Mr. EATON] did not offer an amendment.

Mr. EATON. No, sir.

The CHIEF CLERK. The amendment, as modified, reads:

The cost of paving the intersections of all streets and avenues and all public parks lying and abutting upon said avenue to be paid out of the general revenue of the District, except the portions of such intersections lying between the tracks of the said railroad company and two feet on each side thereof, which shall be paid by said railroad company, and after the aforesaid deductions the residue of the cost to be paid as follows.

Mr. WEST. After calling the attention of the Senator from Delaware to the fact that he proposes to make the District pay for paving in front of the public parks which belong to the Government of the United States, he sees the impropriety of that and agrees to a modification of his amendment. The result of his amendment, if modified in the way I propose, will be to charge the District with the intersections, the Government with the cost in front of its reservations, with the exception, as I understand, of the Market Space, for which the Senator from Arkansas proposes to provide, and it will distribute the cost around somewhat in the same proportion as he has spoken of and as I have agreed upon; that is to say, the District will pay about $120,000; the Government, $130,000; and property holders on the Avenue, $54,000. The amendment, as thus modified, is:

The cost of paving the intersections of all streets and avenues abutting upon said avenue to be paid out of the general revenue of the District, except the portions of such intersections lying between the tracks of said railroad company and two feet on each side thereof, which shall be paid by the said railroad company; the cost of the said pavement lying between the public parks and the Botanic Gardens and a line two feet outside of the said railroad track to be paid by the United States, and after the aforesaid deduction the residue of cost to be paid as follows.

Mr. BAYARD. I accept the modification.

The PRESIDENT *pro tempore*. The amendment of the Senator from Delaware will be so modified.

Mr. ALLISON. I do not think that improves the amendment of the Senator from Delaware, and, if I shall not disturb my friend from Louisiana, I will give one or two reasons for saying so. I think the distribution under the amendment proposed by the Senator from Delaware is more easily arranged for than that provided for by the amendment as now modified.

There are no public parks on Pennsylvania avenue between First and Fifteenth streets, except two little spaces, one at Thirteenth street and one at the intersection of Seventh street.

Mr. WEST. If the Senator will look at this diagram he will see that there are five.

Mr. ALLISON. I have walked the Avenue a great many times and I think I know exactly the condition of the Avenue. The amendment proposed by the Senator from Delaware it seems to me is a very just one and perhaps not at all objectionable, but I call his attention, and also that of the Senator from Louisiana, who seems to have taken sufficient interest at least to have a diagram of the Avenue, to the fact that from the Saint Marc Hotel, between Sixth and Seventh streets to Ninth street, is an entire public space; it is at the intersection of Louisiana avenue and C street and a small park. As I understand the amendment proposed by the Senator from Delaware, the District government would pay for the paving between that entire space, of which the Government of the United States would be required to pay about one-half. So, when you reach Thirteenth street, there is another space, a small portion of which is covered by a park. From Thirteenth street to Willard's Hotel the entire space would be paid for, as I understand the amendment of the Senator from Delaware, by the District Government.

Mr. WEST. On both sides of the street.

Mr. ALLISON. And on both sides of the street; and one-half in turn again would be paid out of appropriations made from the Treasury of the United States. So it seems to me this mode is simpler than the mode proposed by the Senator from Louisiana. The amendment of the Senator from Louisiana is that the Government shall pay in front of the public parks. The public park between Seventh and Eighth streets is but a very small portion of that public space; and you will have confusion as to computations if you undertake to make so many divisions. I would prefer therefore to vote for the proposition of the Senator from Delaware, saving perhaps the provision as to the Botanic Garden; and my vote will be controlled in that respect by a question that I propose to ask the Senator from Arkansas. Aside from that, I think the fairest method is the method proposed originally by the Senator from Delaware.

Now I want to ask the Senator from Arkansas who has charge of this bill, if the amendment proposed by the Senator from Delaware should not be adopted, would the United States pay one-sixth of the cost of paving in front of the Botanic Garden under the bill as it stands?

Mr. DORSEY. In answer to that I wish to state the theory on which this division was made. The United States owns about one-third of the frontage of the Avenue—something less than one-third. The District authorities control the cross streets and avenues, the intersections of which amount to nearly a third—not quite. The property-holders of course, then, own something more than one-third. So

we thought it would be best, the most equitable, and the fairest way to make a division from one end of the street to the other, leaving one-third to be paid by the United States, one-third by the District, and one-third by the property-owners. The paving in front of the Botanic Garden will be paid just the same as that in front of Willard's Hotel; and so of the pavement in front of all property on the Avenue.

Mr. ALLISON. Would the space in front of the Botanic Garden be assessed under this bill?

Mr. DORSEY. It would be assessed under this bill.

Mr. ALLISON. That is, it would pay one-sixth, and the property-holders on the opposite side one-sixth?

Mr. DORSEY. No; the assessment would be spread over the whole Avenue.

Mr. ALLISON. I understand, according to the frontage; but the United States owning the Botanic Garden or that space, would that be assessed at all, or would it only be that the private owners of property on the street would be assessed?

Mr. DORSEY. That would be assessed.

Mr. ALLISON. As private property?

Mr. DORSEY. Not as private property. That goes to make up the Government's one-third.

Mr. ALLISON. It is only the private property on the Avenue that is assessed, then, as I understand?

Mr. DORSEY. That is all.

Mr. ALLISON. With all due deference to the Senator from Louisiana, who has given this subject a great deal of disinterested attention, I do think we ought to adopt the original proposition of the Senator from Delaware, that the District government shall pay for the pavement in front of these spaces, and that the remainder of the property shall be assessed as provided in the bill. But I think the wording of this bill will require an assessment to be made on the line of the whole Avenue unless there shall be some amendment; that is, extending from the Capitol to Georgetown. Is that the understanding?

Mr. DORSEY. From the Capitol to Fifteenth street. The pavement only extends to Fifteenth street.

Mr. ALLISON. But the bill says "by the owners of property lying and abutting on said Pennsylvani avenue in proportion to their frontage thereon." If you mean that portion of the Avenue lying between Fifteenth street and the Capitol, say it.

Mr. INGALLS. Mr. President, the subject is one that is not free from difficulty and is open to some embarrassment in whatever aspect it may be presented; but, in justification of the report made by the committee and the views that have been suggested by the Senator in charge of the bill, I will submit the fact that while this bill was in committee and before it had been reported to the Senate I was called upon by two gentlemen, residents of the city of Washington, who had a petition signed by a very large proportion of the owners of real estate upon the Avenue, representing a very large percentage of the entire assessment of property to be affected by the tax to be levied by this bill, and I then stated to them the views that I entertained in regard to the distribution of the tax upon the property-holders, upon the Government, and upon the District, substantially as set forth in this bill; and those gentlemen, claiming to represent the property-holders, stated to me that they were entirely satisfied, so far as they were concerned, with the assessment that was proposed by this bill to be levied as the share to be paid by the owners of private property. I believe now that, considering all the circumstances, the difficulties that surround the question, and the conflicting rights of the Government and of the property-holders themselves, and considering also the amounts that have been paid under previous assessments, the bill as reported by the committee presents the fairest and most equitable method that can be devised for paying the sum to be raised for this purpose, and I hope that the Senate will agree to the bill as reported by the committee, and reject the various amendments that have been proposed by the Senator from Delaware and others upon the floor.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The question is on the amendment offered by the Senator from Delaware, as modified.

The amendment was rejected.

Mr. DORSEY. I move to insert in section 3, line 12, after the word "Avenue," the words "including the frontage of the ground occupied by the Washington Market Company." That is to require the Washington Market Company to pay for the pavement in front of their market.

The amendment was agreed to.

Mr. SAULSBURY. I see that the seventh section of the bill provides that the old pavement shall be removed and delivered to the authorities of the District of Columbia for such use as they may see fit to make. I understand that the District authorities used blocks in the pavement now on Pennsylvania avenue which will be of value to them. These blocks were put down originally at the expense of the property-holders on the Avenue. These blocks were their property; they paid for it originally. If there is any value in it, they ought to have the title to the blocks or other materials which were put down at their expense. It is not right to take private property, property for which value was paid, and convert it to public use without proper compensation. I have prepared an amendment which I will send to the desk.

The PRESIDING OFFICER. The amendment of the Senator from Delaware will be reported.

Mr. SAULSBURY. I will say that I do not know personally whether the District authorities desired to have these materials or not. I have been told, however, that they will be of service to them in repairing other streets; and, if so, it is but fair and proper that proper compensation should be allowed to the property-holders who originally put them down.

The PRESIDING OFFICER. The amendment will be read.

The Chief Clerk read the amendment as follows:

Add to section 7:

Provided, That the materials in the old pavement in front of the property of each property-owner shall be valued by the commissioners, and the amount of said valuation credited to said owner and be deducted from the amount of his assessment under this act: *And provided further*, That the railroad company may, if they so desire, remove and retain the cobble-stone and other materials forming the bed of their said railroad.

Mr. DORSEY. I certainly hope that that amendment will not be adopted. In the first place, the provision in regard to the disposition of the old pavement was thoroughly considered by the committee. We have in this city a very large number of streets paved with wooden pavements. A great many of them are giving out and some of them are indeed already gone. It was thought by the committee that the commissioners of the District could take such of these blocks as were good and sound and use them on other streets, as E street, for example. If they were appraised and sold at auction, they would bring but a very small sum of money, and the result would be that they would be frittered away and no benefit realized to the property-holders or to the District.

As to the provision in regard to the railroad company, I desire to say a single word. This company had been, through its president, Mr. Hurt, before the committee and urged the amendment offered by the Senator from Delaware very strenuously on the ground that it could not afford to stand thirty or forty thousand dollars, the sum which would be required to repave the railroad tracks and the space between the tracks. The truth is that this railroad company has got by all odds the most valuable franchise in this District or that this District can ever grant. It paid last year, as was shown by the president in a paper which he submitted to me, 13 per cent. on $900,000 capital, bonds and stock, while the actual cost of the railroad, in answer to a question propounded by myself to the president, was shown not to be over $300,000. It pays 13 per cent. on a capital three times its original cost. I am sure we do not want to grant a corporation of that sort any extraordinary privileges to which they are not entitled under the law. Their charter requires them to do this paving and keep it in order, and to pave two feet outside of their tracks. As the bill now stands, the question of the kind of pavement they are to use, the manner of laying it down, and the whole subject are referred to the commission appointed by the bill, in whose hands I hope it will be left.

Mr. SAULSBURY. I understand that when this pavement was laid down originally the property-holders paid the expense of laying the wooden pavement in front of their property. If so, every block of wood which enters into the pavement was paid for by the property-holder adjoining whose property it was placed. Therefore whatever value there may be in these blocks when removed from the pavement certainly belongs to the property-holders in justice and equity. I do not propose to take that which honestly belongs to a man without compensation. This amendment does not propose to take this material from the District authorities; it only provides that the commissioners who are to lay down this new pavement shall value these blocks and credit each property-holder with whatever value they may have. I do not know that they will value them at anything scarcely; but if there is any value in them, if they have any value, let the property-owner who originally placed them there be credited with that amount, and let the amount be deducted out of his assessment under this bill.

Now, in reference to the railroad company, I have no doubt that company obtained from Congress, or whoever granted it, a very valuable franchise; that it is worth a great deal of money to the company; still it is true that they placed a great deal of stone on the bed of their road. They placed it there at very considerable expense. They did it at their own expense, not at the expense of the Government of the United States, not at the expense of the District government; and you compel them by this act to replace those stones by some other material. The amendment that I have offered only secures to that company which placed these cobble-stones there the right to remove and retain them. They may be valuable to them in some other place. They cost them originally a considerable amount of money, I have no doubt, and they may be of use to them hereafter. They are their property. They paid for it originally. Why do we want to take it now and give it to the District government? I have no special partiality for railroad corporations. I did not help to grant this franchise originally. I have no doubt that it was unwise to grant them a franchise without proper compensation for it; but you have already granted it, and you have compelled them to pave the bed of their road with cobble-stones, and now you require them to remove them. All that my amendment does is simply to secure to the company the right to remove these stones and retain them for their own use.

Mr. DORSEY. I wish to remind the Senator from Delaware that

the Senate struck out the provision in this bill requiring the railroad company to pave the space between its tracks with square blocks of stone, and it is now left to the judgment and the discretion of the commission appointed under this bill to determine how and of what material the pavement shall be made. I certainly hope that the Senate will not intervene and indicate to the commission in any manner what shall be used to pave the space between the railway tracks.

As to the wood pavement, the Senator is only partially correct in saying that the owners of property along the Avenue originally paid for it. They only paid for a part of it. They paid for half of it, and they have had the use of it for five or six years, which, I think, is a fair compensation for what they paid in 1871. It seems to me that if this old material was appraised and put up at auction and sold it would bring a very small sum, hardly worth considering by the property-holders, while if it were put into the hands of the District commissioners it could be made useful in repairing some of the worn-out streets in other parts of the city. That was the purpose of the committee in leaving the matter in the hands of the commissioners.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Delaware, [Mr. SAULSBURY.]

The amendment was rejected.

Mr. DORSEY. In section 6, lines 5 and 6, I move to strike out the words "left at the property assessed," and insert "published in one or more papers printed in the District of Columbia," so that the notice of the assessment will be printed in a public newspaper instead of left on the premises.

The amendment was agreed to.

Mr. DORSEY. In line 26 of the same section I move to strike out the word "20" and insert "10," so that on default of the payment of any sum assessed the property-owners shall only be mulcted 10 per cent. instead of 20 per cent.

The amendment was agreed to.

Mr. INGALLS. I desire to call the attention of the Senator having this bill in charge to the fact that there is between Ninth and Tenth streets, on the north side of Pennsylvania avenue, a very considerable tract of pavement of concrete or asphalt that is in perfectly good condition to-day. I ask him whether or not that fact has been taken into consideration in this bill heretofore, as I have been out and have not been present during the consideration of all the amendments that have been offered?

Mr. DORSEY. In reply to my friend from Kansas, I will say that I have considered that fact. I thought it would be better to leave it entirely with this commission, who will probably want to change the grade somewhat. If they do not absolutely lay down a new pavement at that place, they will be likely to lay a new coat over that already down. There are two pieces of pavement there, and if my recollection is right one piece of it is much lower than the other. I thought it best not to make any reference to it in this bill.

Mr. WEST. I presume that now the conclusion of the Senate will be to vote affirmatively on the passage of the bill. I only wish to say in a few words why the bill will not meet my assent. In conjunction with some other Senators I have essayed to protect the owners of property on the line of this avenue from what must be considered nothing less than an extortion, and I will state why. As the bill stands, rejecting the amendment of the Senator from Delaware, [Mr. BAYARD,] the property-holders on the line of Pennsylvania avenue between the Capitol gate and Fifteenth street will be once more subjected to a cost of $15.79 per running foot for paving in front of their property. They paid in 1871 $19 a foot. Consequently you will have over $34 per running foot assessed upon that property for paving within five years. Take Pennsylvania avenue west, from its junction at Fifteenth street to Rock Creek, and the property fronting upon that avenue has paid $4.83 per foot; so that the unfortunate property-holders between the Treasury and the Capitol are to pay $34 and the fortunate property-holders west of that are to pay less than $5. That would be a gross injustice, and certainly is not to receive my assent. Whatever I have said here with reference to protecting the rights of these people has been, if I have any interest at all, directly against my own personal interest, being somewhat concerned in a small piece of property here. The more that is charged to the District the worse I should be off. I propose that the District should in justice incur the greater proportion, and that these unfortunate property-holders should be exempted from this extortion. It would be nothing more and nothing less than extortion. It is $34 a running foot upon their property in five years, which is $30 more than other property pays in the District. The proposition is wholly unjust, and it will not meet my support.

Mr. DORSEY. I should like to ask the Senator from Louisiana a question. I ask him to state to the Senate in what manner the pavement on Pennsylvania avenue west of Fifteenth street was paid for.

Mr. WEST. It is one of those conundrums that "no fellow can find out" how it was paid for. I can only state how much the property that fronts on the street paid for it.

Mr. DORSEY. I will answer the Senator. The pavement was paid for with 3.65 bonds of the Government of the United States, and the cost was never assessed on the property.

Mr. WEST. That may be, but yet the District has to pay for those bonds eventually and the property at large is taxed to pay for them. I remind the Senator once more that under the provisions of his bill he assesses a tax of $34 on one man's property while he allows another to be assessed only four or five dollars. That is the whole of it. I endeavored to come to their rescue, and the Senator from Delaware endeavored to come to their rescue, so as to reduce this enormous extortion which is now sought to be imposed upon these people. The proposition has been voted down. I think before the Senate votes on such a proposition it ought to understand just what it is.

Mr. WHYTE. I move to strike out the words "and sixty cents" in the seventh line of the fifth section, so that the sum shall not exceed $4 per square yard. If those words are stricken out it may probably save the parties who are called upon to pay for this pavement some $42,000. The highest price that I have heard stated here for laying the best pavement is $3.90. I think therefore that $4 is an ample limit as the maximum price which shall be paid for this work.

Mr. DORSEY. I call the attention of the Senator from Maryland to the fact that $4.60 is not only for the pavement, but it is for removing the old one, for grading the street, and for all other expenses attending the work. I will call his attention further to the fact of the importance of laying down a pavement that will last for at least ten years. If a pure asphalt pavement is laid, such as Neuchâtel, Val de Travar, Trinidad, or Grahamite, it will cost at least $4 per yard. A pure asphalt pavement cannot be put down for less. Of course we could get a pavement made of ashes and gravel and coal-tar. There are such pavements which we could probably get for $3 a yard and perhaps for less, but the intention of the committee was to fix on such a sum as would warrant the putting down of the very best kind of pavement. I hope the words "sixty cents" will not be stricken out so as to reduce the limitation. The commission need not go to that figure unless it is necessary in order to get a good pavement. I have faith enough in their integrity and ability to determine what is the right sum to pay to believe that they will not go to that limit unless it is absolutely necessary.

Mr. RANDOLPH. May I ask the Senator whether this $4 or $4.60 is to include the renewal of the pavement for the next three or four years.

Mr. DORSEY. It is the custom, I understand, for those who put down a pavement to keep it in repair for a period of three years, and that expense would be included of course in the contract.

Mr. RANDOLPH. I quite agree with the Senator from Arkansas that the price fixed by the bill is quite low enough. If the experience of experts upon this subject be of avail, the limit is already low enough, taking into consideration the removal of the old pavement, the substitution of the new, and the preparation that would be necessary in order to make a thorough foundation for a new pavement.

Mr. DORSEY. I will state further—and I call the attention of the Senator from Maryland to the fact—that this limitation was added at the suggestion of the property-holders, many of whom in discussing the subject with me thought if it was left open the cost of preparation for the pavement would amount to about as much as the pavement itself. They preferred this limitation or even a higher one to be put in the bill rather than no limitation at all.

Mr. WHYTE. The reason for my offering the amendment is to be found in the fact that we have reports made to us here which ought to give us some information certainly; and I observe that the wood pavement on the Avenue cost about $2 or $2.50 a square yard. I understood from the Senator from Iowa, [Mr. ALLISON,] who spoke the other day on this subject, that the pavement which confessedly was the best pavement in use in this District, the Neuchâtel pavement, cost but $3.90 a square yard. There is no grading to be done. The grading has been done already. All that is to be done is to take up the wood pavement and carry it away and use it for the purposes of fuel, to which I suppose it will be appropriated, and to lay down the new pavement. There is therefore no extra expense except to lift that pavement away and put down the other pavement, and I think a saving of $40,000 is of some importance to the people of this District.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Maryland, reducing the limit of the cost from $4.60 to $4.

The amendment was rejected.

The bill was reported to the Senate as amended, and the amendments made as in Committee of the Whole were concurred in.

Mr. BAYARD. I desire to submit to the Senate at this time an amendment which was offered in what I conceive to be a just consideration for the rights of the private property-holders along the route of this Avenue. I do not propose to repeat to the Senate what I have said on the subject or to reread the documents in my possession. The people of this District have no representatives on the floor of either House of Congress, and yet they are taxed without representation. The Avenue which it is now proposed to repave is more of a national highway than any other within the limits of the United States. It runs between the Legislative and the Executive Departments of the Government of the United States. It is traversed by a very large population of non-residents. It ought to be a handsome and well-kept Avenue for every reason. It is the most public street in the United States and probably the finest avenue in the United States. Therefore, for these local property-holders to keep this avenue in a proper condition with expensive pavements at their own cost, seems to me utterly unreasonable. If their property should be enhanced in value it is assessed according to value and pays its share of tax according to value; but to compel them to put down these lux-

urious pavements for the benefit of the citizens of the United States who are non-residents of the District seems to me utterly unfair in any way that it can be looked at.

I have shown the Senate by tax bills handed to me that for a pavement badly constructed, unwisely contracted for, and most extravagantly paid for by these very property-holders, they have been assessed within five years nineteen dollars and some cents per front foot. If the present bill reported by the Committee on the District of Columbia should become a law, $15 a front foot more will be added to that cost. It seems to me that the statement of such a proposition shows how unjust it is that we should subject this property to an expense of $35 and perhaps fifty cents per front foot to pave and adorn a street that is used by these property-owners only in common with so vast a body of their fellow-citizens who have nothing to do with the expense. Therefore it is that I propose to renew now the amendment which I offered in Committee of the Whole.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. After the word "repair" in line 7, section 3, it is proposed to insert:

The cost of paving the intersections of all streets and avenues and all public parks lying and abutting upon said avenue to be paid out of the general revenue of the District, except the portions of such intersections lying between the tracks of the said railroad company and two feet on each side thereof, which shall be paid by the said railroad company. The cost of the said pavement lying between the Botanic Garden and a line two feet outside of the westerly side of the said railroad tracks to be paid by the United States; and, after the aforesaid deduction, the residue of the cost to be as follows.

Then follow the words in the bill:

By the owners of private property lying and abutting, &c.

Mr. WEST. Will the Senator from Delaware permit me to make a suggestion to him? He has used the expression "the westerly side of the said railroad tracks." I call his attention to the fact that Pennsylvania avenue runs nearly east and west. It should be "outside of the side of the said railroad tracks." It is not the westerly side. He intended the term "westerly" to apply to the Botanic Garden, which is on the southerly side. If he will omit the words "of the westerly side" he will accomplish what he wants.

Mr. BAYARD. I will modify my amendment by striking out the words "of the westerly side."

The PRESIDING OFFICER. The amendment will be so modified. The question is on the amendment as modified.

The amendment was agreed to; there being on a division—ayes 30, noes 9.

Mr. SHERMAN. I ask, for information, if the amendment requires the intersections of the avenues and streets to be paid by the city government? If that is the case, it seems to me it is rather hard upon the city government.

Mr. DORSEY. As I understand it, it requires the District government to pave all intersections of streets and avenues; that is, two feet from the railroad track back to a line even with the curb-stone on Pennsylvania avenue.

Mr. SHERMAN. It seems to me that there is great injustice in making this pavement at the expense of the city. If there is any force in the argument of the Senator from Delaware, it certainly ought to be to reduce the cost to the city. It seems to me the Government of the United States ought to make all this road between the Treasury Department and the Capitol except such as immediately abuts or fronts on private property. There would be no hardship in doing that, because the Government of the United States undertook five years ago to make this road and made it in a very imperfect manner. To require the city government to pay for it per yard by the taxes of the people of the District, and then make the people themselves pay for the intersections, is very hard. It seems to me the Government of the United States ought to do that.

I did not intend to interfere with the passage of the bill, and will not offer any amendment. I voted for the amendment of the Senator from Delaware. To require the city government to pave all intersections must apply to the whole length of the Avenue. There are fifteen streets or more than that—at least fifteen—the ordinary width of which I suppose would be one hundred feet or more. There would be fifteen hundred feet to be paved by the city authorities. It is between a third and a quarter.

Mr. EDMUNDS. Just about a third.

Mr. FRELINGHUYSEN. I agree entirely with what the Senator from Ohio has said. I voted for the amendment of the Senator from Delaware because I thought it was better that this expense should come out of the general treasury of the District than out of the particular property-holders on the Avenue. I think that the expense of paving the intersections ought to be borne by the United States.

Mr. WEST. The whole of it?

Mr. FRELINGHUYSEN. In front of these streets. An amendment was proposed here that the United States should pay in front of its own property, its parks, and it was voted down, as I understand.

Mr. WEST. If the Senator will permit me, the amendment as adopted requires the Government of the United States to pay $137,000, the District $120,000, and the property-holders on the Avenue the balance.

Mr. DAVIS. What amount will the property-holders have to pay?

Mr. WEST. Fifty-four thousand dollars.

Mr. SHERMAN. The property-holders of the city then have to pay $120,000 besides?

Mr. WEST. Yes, sir.

Mr. SHERMAN. It is a very heavy tax upon the city. The city is now overburdened with debt. It seems to me it would be better that the United States should at once assume this burden rather than throw it upon the District. The District is not able to pay it. It is not in a condition to pay it. One hundred and twenty thousand dollars put by this bill upon the city government is about one-tenth of all the taxes that are laid upon the private property of the city of Washington annually. The tax levied at the rate of 1½ per cent. on the property of the city will not yield over $1,300,000, I am told, the valuation being about $85,000,000 or $90,000,000. Therefore this would be in addition to the other taxes to be imposed upon the city, a tax of one-tenth of the amount. I do not think it is just or right. I would a great deal rather that the Government of the United States should at once assume the entire expense of repaving Pennsylvania avenue except that which properly belongs to private property-holders for the portion abutting on their property. There the private persons ought to pay their portion of the tax, although even then it is very hard upon them. Persons owning property along Pennsylvania avenue have been severely taxed. They have been very much injured already by the pavement that has been laid down; and now within five years to require them to renew this tax and pay it over again is pretty severe. That expense could be borne; but when you add to that and impose upon the general property of this District private property $120,000 more, it seems to me that it is unjust.

Mr. BAYARD. My attention has been drawn by the Clerk to the fact that a portion of the amendment offered by me was not read by him. It was owing to the manner in which it was printed in the RECORD. I handed it to him in that shape. I will ask, therefore, that the remaining portion of my amendment be read. I will state to the Senate by way of explanation that it controls the fractions of this cost which are to be relatively assumed by the Government of the United States, by the government of the District, and by the private property-owners. The amendment as I had it first proposed that the Government should bear one-third, the District government one-third, and the private property-holders one-third. Upon some conversation with the senior Senator from Maine, [Mr. HAMLIN,] I have enlarged the proportion to be borne by the Government of the United States and decreased the proportion to be paid by the government of the District and private property-holders, making the Government of the United States to bear one-half and the others to bear one-fourth of the cost of this improvement each. I ask that the remaining portion of my amendment be now read. The Clerk has it.

The CHIEF CLERK. That part of the amendment which was not reported is to amend section 3 by striking out "one-third" in line 13 and inserting "one-fourth;" in line 15 by striking out "one-third" and inserting "one-half;" and in line 17 striking out "one-third" and inserting "one-fourth;" so that if amended the clause will read:

In proportion to their frontage thereon, one-fourth of the expense, after deducting the amount paid by said Washington and Georgetown Railroad Company; one-half to be paid by the United States out of any money in the Treasury not otherwise appropriated; and the remaining one-fourth to be paid out of the general revenue of the District of Columbia.

Mr. LOGAN. That applies to the whole Avenue?

Mr. DORSEY. Am I to understand that the Senator from Delaware withdraws his first amendment and now proposes this instead of it?

Mr. BAYARD. O, no. I have not withdrawn my first amendment. There was a misapprehension, owing to the form in which it went to the desk. But a part of the amendment was read. The Clerk left out the last clause of it, which divides the cost of this work, and that has just been read.

Mr. SHERMAN. I call for the reading of the whole section as it will read if amended.

The CHIEF CLERK. Section 3, if amended as proposed, will read:

That the cost of laying down said pavement shall be paid for in the following proportions and manner: The Washington and Georgetown Railroad Company shall bear all of the expense for that portion of the work lying between the tracks of their road, and for a distance of two feet from the track on each side thereof, and of keeping the same in repair.

The cost of paving the intersections of all streets and avenues and all public parks lying and abutting upon said avenue to be paid out of the general revenue of the District, except the portions of such intersections lying between the tracks of the said railroad company and two feet on each side thereof, which shall be paid by the said railroad company. The cost of the said pavement lying between the Botanic Garden and a line two feet outside of the westerly side of the said railroad tracks to be paid by the United States; and, after the aforesaid deduction, the residue of the cost to be as follows: By the owners of private property lying and abutting on said Pennsylvania avenue, in proportion to their frontage thereon, one-fourth of the expense, after deducting the amount paid by said Washington and Georgetown Railroad Company; one-half to be paid by the United States out of any money in the Treasury not otherwise appropriated; and the remaining one-fourth to be paid out of the general revenue of the District of Columbia from any funds in the hands of the commissioners or the treasury of said District, upon the warrants or orders of said commission, when the same shall have been passed in the Treasury Department, as in case of the disbursement of public money.

Mr. DORSEY. I did not understand that amendment at all. I observe, now that it is read with the whole section, that it throws at least three-fourths of the entire expense of the pavement on the United States.

Mr. SHERMAN. As I understand it, it yet throws upon the District government the entire expense of the intersections of the Avenue,

which is at least one-fourth of the total expense of the whole road. That is unjust. Certainly the United States ought to pay one-half or one-third of the expenses of the intersections. There is no reason why the city should bear the whole of that expense and the Government of the United States no portion of it.

Mr. DORSEY. In the first instance the United States pays the entire cost of pavement from the railroad track back to the curbstone in front of all its reservations and parks. For example, in front of the Botanic Garden it pays the entire expense for two or three squares on one side of the street. In front of the little triangular spaces, where an avenue crosses Pensylvania avenue, the United States pays the entire cost on the side of the street where that triangular piece is, and then in addition to that it pays one-half of the remaining part. It strikes me it is drawing upon the United States Treasury to rather a dangerous point.

Mr. MERRIMON. I beg to say a word in justice to myself and likewise in justice to the committee. I am very sure that I am far from desiring to do any human being on Pennsylvania avenue the slightest injustice. The committee found that to repave that avenue is absolutely necessary. Whether it will cost much or little, some one is bound to bear that burden. Their effort and the effort of the subcommittee of the committee was to ascertain, as nearly as they could, how the burden ought to be borne by the three classes, to wit: first, by the Government of the United States; secondly, by the owners of property along the Avenue; and, thirdly, by the city of Washington. They could adopt no rule, except one arbitrary in its character, but I think they honestly endeavored to see how they could make the levy operate as equitably as possible. In doing so they came to the conclusion that the Government of the United States ought to pay one-third of the gross cost; the people who own property along the Avenue, one-third; and the city of Washington, one-third, after deducting the cost of the railroad track along the center of the Avenue. I myself do not possess a great deal of information upon this subject, but the subcommittee were at a great deal of trouble to ascertain what would be right and equitable. I learn that they consulted with a good many of the property-owners to get their views, and they thought, so far as they were consulted at all, that the proposition named in the bill as reported was reasonable and just and satisfactory.

Very much has been said in this body about the injustice that is to be done the property-owners along the Avenue. I do not see their liability in the light that some Senators do. The great bulk of property-holders along Pennsylvania avenue are engaged in some sort of business or other, and they have an advantage which is superior, and greatly superior, to the advantages enjoyed by any other of the business people of the District of Columbia or the city of Washington. There is more travel upon that street, more passengers go over it, and there are more circumstances that attract people there than upon any other street in the District. They have advantages in the point of trade, growing out of the number of persons who pass over this street, whose attention is attracted there, more than double or treble that of any other portion of the city.

Mr. BAYARD. I suggest to the Senator from North Carolina that, if that is true, that makes their property more valuable; but as it becomes more valuable it is assessed at higher rates and they pay higher general taxes upon it.

Mr. MERRIMON. I was going to remark upon that. That is very true. That is right and just. But I mean to say that they have more advantages, over and above the increased value of their property and the increased assessment, than any other people in the District. I think that they realize the fact themselves. The committee were of opinion that, in view of that additional advantage, it was right and just, inasmuch as their traffic went over the street more than other people's, that they should pay this increased price. It is true it is burdensome. I regret that; but it is of no use to discuss it. That is a fact out of the case entirely. The evil is here. It must be met; the street must be repaved, and the three classes I have mentioned are bound to do it. The simple question is, what is the reasonable proportion among those three?

Mr. RANDOLPH. But they have already paid within the last five years for the pavement some eighteen or twenty dollars a foot.

Mr. MERRIMON. That was their misfortune, and they must bear the misfortune like other people.

Mr. RANDOLPH. It was owing to mismanagement entirely that it was done.

Mr. MERRIMON. I do not think the people of the United States are to be blamed at all. I do not think the people of the city of Washington generally are to be blamed about it. It was a calamity, and this calamity must be borne by these three classes; and according to the best information that the committee after a great deal of labor could obtain, they thought that this arrangement, although arbitrary, was as equitable and fair a one as the committee could hit upon. I do not believe, if the Senate work here six months, that they will come to one that is more equitable. I consented to tax the people along the line one-third of the gross cost, because they have an advantage that no other people of the District of Columbia or of the city of Washington have. They have an advantage over and above the allowed increased valuation of their property and over and above the increased taxes they pay upon that account. It was for this reason that the committee consented to the proportion and arrangement provided in the bill. It was for this reason that I yielded my assent. I am as far from wanting to do the people along the Avenue injustice as any one can be, but I could not see it in any other light than that which I have endeavored to bring to the attention of the Senate.

Mr. LOGAN. From the indications I presume the Government will have to bear all this burden. A short time ago I thought the Senate had the impression that fair dealing toward the tax-payers outside of the District of Columbia should at least be shown in this bill. I do not expect to convince any man, but if I can have the attention of the Senate for five minutes I can satisfy any one that the amendment moved by the Senator from Delaware is an imposition upon the United States Government fourfold more than any that has heretofore been advocated on this floor. Let us consider the proposition in the bill. It is to pave Pennsylvania avenue and allow the Government to pay one-third of all the expense, the city government one-third, and the property-holders one-third. What is the proposition now partially adopted by the Senate? I have not time to show by a map or drawing or anything of that kind, but take Pennsylvania avenue as it runs. On the left we have the Botanic Garden, a short distance farther on we have a park on the right, and so on. The proposition which the Senator from Delaware now proposes requires the United States to pay all of the assessment in front of the Botanic Garden up to the railroad line. What else? It then requires the Government to pay one-half of the amount taxed against property on the other side of the railroad line. That is the proposition of the Senator from Delaware.

I supposed, when we discussed it before, the proposition as we then had it was for the Government to pay one-half in front of the Botanic Garden; and I suggested that the Government be exempt from its third on the other side. He said that was fair, and the Senate partially consented to that; but now he proposes an amendment, not to exempt the Government from the one-third on the other side, but that the Government shall pay the whole on one side and one-half on the other side, instead of one-third, as originally proposed in his amendment. And the Senate seem disposed to take that as being a proper way to dispose of this question, when I think there was no man in the Senate when the proposition was first made this morning who advocated it; the Senator from Delaware himself would not do it.

Let us go a little further. Now the proposition is that Pennsylvania avenue shall be paved. How? That the Government shall pay all the expense of paving in front of its own ground up to the railroad; then it shall pay one-half of all the balance. What do the property-holders pay? Not one dime for the pavement in front of the Government ground, according to this amendment, but one-fourth of the pavement in front of their own property where it is not along Government property, and that the District itself shall pay for the cross streets and one-fourth of the tax on the private property, not one-fourth of the tax on the General Government. I ask any man to tell me on what principle of honesty or justice a proposition of this kind can be advocated?

If, Mr. President, the Senate are determined to saddle this upon the Government, upon their constituents, let them make a smooth thing of it, have no mystery about it, say that the Government shall pay it all except a mere pittance, for that is the meaning of this. Why not say so if that is what you mean? Why not say that the Government shall pay for paving in front of all these hotels and all these large stores? That is what you mean by the amendment; and why not say so? I ask any Senator here if he believes it is honest and just for his constituents to pay for the paving in front of Willard's Hotel, and the National Hotel, and the Metropolitan Hotel, establishments that perhaps make more money than any other parties in this city? You are willing that your constituents shall be assessed to pay what? First, the whole paving in front of your own property, and then one-half in front of these hotels, and then the owners shall pay but one-fourth and the city shall pay the balance. If there has ever been such a proposition passed either in Congress or in a State legislature or in a city council in the United States of America, I should like some man to show it. There never has been so unjust a proposition agreed to anywhere in reference to the paving of streets in any city in the United States.

I know it is not a very comfortable thing to fight against spending the people's money for the pleasure of the District of Columbia. I have done it very often. I have not succeeded very well in doing it. I do not expect to succeed now. But I tell you, Mr. President, when the people of the United States do once understand that outside of the city of Washington taxes are imposed on them which ought to be imposed on the citizens here, aside from the taxes imposed on Government property, they will want to know the reason why. What is the reason? I cannot tell. I do not understand it. No man can tell. No Senator can explain the reason for it. Of course it is not private interest. No man would insinuate that it is private interest. Of course it cannot be that. What is it? It is a disposition to deal with public funds, not as the agent of the people, not as the representative of the people, but merely to deal with them as a man who receives charities would deal with the charities again.

I understand the principle upon which the paving of streets is done to be this: In front of my house I pay a certain portion of the expense of the paving; the city pays the balance. The property-hold-

ers along the side of the streets are assessed first in the opening of the street for the right of way; then when you come to pave the street the property-owners are assessed for that, on either side, a certain amount, and the general fund of the city goes to pay the balance. That is the rule everywhere. If any man can show me a reason for making the Government of the United States pay for paving streets in front of private property, where they own nothing whatever, and pay one-half of it, then I will give it up.

Mr. BURNSIDE. Will the Senator from Illinois allow me to ask him one question?

Mr. LOGAN. Certainly.

Mr. BURNSIDE. Does the Government of the United States pay anything into the District treasury for taxes on its property?

Mr. LOGAN. The Government of the United States has its property in the city of Washington assessed at $60,000,000 for taxing purposes.

Mr. BURNSIDE. Does it pay taxes on that?

Mr. LOGAN. It did do it.

Mr. WEST. When?

Mr. LOGAN. Not long ago.

Mr. BURNSIDE. I did not know it.

Mr. LOGAN. I beg pardon. In the estimates that were made here before the Senate agreed to pay the portion of Government property, the property of the Government was estimated at $60,000,000, and the proportion was fixed on that ratio of assessment right here in the Senate.

Mr. MERRIMON. It was expressly provided in the act of last year or the year before that the Government should be taxed in proportion to its property to pay the interest on the 3.65 bonds.

Mr. LOGAN. Yes, sir. I remember it well, and other Senators do who paid attention, that the estimate was $60,000,000; and after paying taxes on that enormous amount, more than all the property cost, you then come forward and make it pay one-half of all that which is incumbent on the city and its citizens to pay besides.

Mr. DORSEY. That is not so.

Mr. SARGENT. The Government never has paid any money in the sense of taxes in the District. The law in reference to the 3.65 bonds pledged the Government to pay its proportion; and it has been used as matter of argument that the property of the United States in the District was worth $60,000,000, and that in making our appropriations we ought to keep that in view, and appropriate a sum which would be equal to the taxation on it; but it never has been done. If it could be done, if a fair rate could be paid by the Government annually, equivalent to that taxation, then we ought not to tax the Government to pay for this paving at all, and it should all be assessed upon the District treasury.

Mr. BURNSIDE. That was the point I had in view.

Mr. LOGAN. I will answer that proposition, I do not care by what name you call it. You may say it is not assessed as taxes and paid into the District treasury; but, call it by what name you please, under your law that gives the right to assess this property at $60,000,000 in making your estimate for appropriations, it is a tax, and by no other name can it be known. The same principle applies in reference to customs duties. They are not commonly known as taxes, and yet they are taxes, and should be known as taxes.

Mr. MERRIMON. Will the Senator from Illinois let me read the clause of the statute to which I referred a moment ago?

Mr. LOGAN. Certainly.

Mr. MERRIMON. In the act approved June 20, 1874, creating the present commissioners as the government of the District of Columbia, it is provided in section 7:

> And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act and by causing to be levied upon the property within said District such taxes as will provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, create a sinking fund for the payment of the principal thereof at maturity.

Mr. LOGAN. Certainly; that is the law making the Government pay its proportion in accordance with the valuation of its property, as I said; and it was valued at $60,000,000. It is a tax, and it is nothing less, nothing more. Now I want to ask a few questions of the Senate before they propose to make their constituents pay this amount for the paving of this avenue other than what is just according to the ratio that we ought to pay for paving in front of our own property.

For the benefit of the District of Columbia you passed a law but a few days ago assuming the debt of this District and paying the interest on it, amounting to $15,000,000 for improvements in this city. The improvements in this city in the last few years, under the direction of the Congress of the United States, have cost the people of this country very nearly $30,000,000. This is a tax upon the people outside of the District; it is a tax upon the whole people of this country. You have a law here in this District that exempts personal property from taxation. The banker may have his millions in his vaults and he is not taxed on that property. This was done, as I understand, as an inducement for what? To induce rich men to come and live in the District of Columbia where they would not have their private assets taxed; their bonds and their moneys are all exempt here under your laws. Wealth is exempt from taxation! With these exemptions on the citizens of the District of Columbia, you as legislators propose now that you will exempt them further by imposing these burdens upon your own people; and that is called honest legislation!

I said this morning and I say now that I am willing that the Government shall be assessed to pay its proportionate share for pavement in front of every foot of ground it owns, and around its buildings, around its gardens, and all its public grounds. Let it pay that which is just and proper, the same as if it was an individual owner. I ask any man to tell me the difference. A corporation in law is considered an individual. What is the difference between the assessment on property belonging to the Government and the assessment on property belonging to an individual? Will some man explain the difference? One belongs to an individual, and he has a right to deed or assign it, and the other belongs to the Government. The difference is that the individual pays the tax on his own property and the people pay the tax on the property of the Government. But when you come to the just rule of levying assessments, there is no difference; the rule is and ought to be the same.

I enter my solemn protest against this robbery of the Government of the United States. You may call it what you please; but it is the Congress of the United States putting its hands in the public Treasury and dealing out the funds without respect to the interests of the people or the Government. These funds ought to be reserved for other purposes. In other words, this is a legal robbery of the Treasury of the United States for the benefit of the District of Columbia. That is exactly what it is—a legal robbery of the Treasury for the benefit of individuals who reside within the confines of this District. Whenever you impose one dollar's tax on the Treasury of the United States more than you do on the city and the property-owners on account of the property that they own, every cent over and above that which you impose on them is just that much money robbed and wrenched from the pockets of the people outside of this District for the benefit of these people who pay no tax on personal property.

I am willing to see the bill pass as it came from the committee. That made the Government pay one-third, the property-owners one-third, and the District one-third. That is in accordance with some rule, some principle, some justice, and some equity. But when you make the Goverment pay it all, or nearly all—all in front of its own property and one-half in front of everybody else's property—you then rob the Government of that one-half in front of everybody else's property.

This amendment is the stepping-stone to the paving of all the streets in this city finally by the Government of the United States. It is to be a precedent for payment by the Government for paving all the avenues of this city out of the Treasury finally. I think the Treasury has paid about enough for this city. Senators talk about frauds in pavements, about frauds and rings here that rob the Government. How did those men rob the Government? They robbed the Government by taking contracts and defrauding the contracts, by violating the law, by failing to do that which they were required by law to do. They robbed the Government in that way. What is the difference? The difference is that you legalize robbery by an act of Congress. You take it out of the Treasury by an act of Congress; and they take it out by violating the law that you pass by frauds in their contracts. The only difference is that one is punishable and the other is not.

The PRESIDING OFFICER. The Chair understands the Senator from Delaware to move a reconsideration of the amendment for the purpose of perfecting it.

Mr. BAYARD. Only that justice should be done. The amendment, owing to the imperfect form in which it was handed to the Clerk, was not read in full; and although the Senate by a very decided vote adopted the first part, it would be incomplete unless the whole were adopted. I therefore suggest that the amendment be passed upon as an entirety; that the two portions be read together, which was not the case when I first offered it. I state that to the Senate frankly that they may understand the precise state of the case.

Mr. SARGENT. I suppose there will be no objection to the reconsideration.

The PRESIDING OFFICER. The Senator moves to reconsider the vote by which the amendment was adopted.

The motion to reconsider was agreed to.

The PRESIDING OFFICER. The question now is on the amendment as modified by the Senator from Delaware.

Mr. EDMUNDS. I move that the Senate proceed to the consideration of executive business.

Mr. DORSEY. I hope the Senator will withdraw that motion.

Mr. EDMUNDS. It is perfectly impossible to finish this bill to-night. There are several other amendments to be proposed.

The PRESIDING OFFICER. The question is on the motion of the Senator from Vermont.

The motion was agreed to.

Mr. SHERMAN submitted an amendment intended to be proposed by him to the bill; and it was ordered to be printed.

EXECUTIVE SESSION.

The Senate proceeded to the consideration of executive business. After one hour and seven minutes spent in executive session, the doors were re-opened; and (at four o'clock and fifty-seven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *April* 17, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of Saturday last was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The Chair desires to say to the House this morning, in reference to the order of business for to-day, that the pending matter of privilege which was up on Saturday last will come up this morning as the unfinished business after the reading of the Journal, under the rules; but it can only continue under that privilege until the hour of two o'clock, at which time the right of the Committee for the District of Columbia, this being the third Monday of the month, will attach to control the House until the adjournment to-day, unless the House now makes some other arrangement by which that committee may enjoy its right of being heard at another time.

Mr. BUCKNER. I desire to say in reference to the reports from the Committee for the District of Columbia that we are very anxious to report a tax bill for this District, and under the circumstances I will ask unanimous consent that the Committee for the District of Columbia shall have this day week at the same hour to the exclusion of everything else; and if the House will agree to that proposition I will give up our right to-day; if not, I shall be compelled to ask that there be a session to-night.

Mr. HENDEE. I would like to inquire how much time the committee who have in charge the Kilbourn matter will require to-day.

Mr. HURD. It is impossible to state; I think the discussion may be finished by three o'clock; but then I shall wish to make the final argument.

Mr. HENDEE. I think that if the discussion on the question of privilege could be disposed of by three and a half o'clock the Committee for the District of Columbia might perhaps conclude its business within a reasonable time before adjournment.

The SPEAKER. The Chair in that connection, with the leave of the gentleman from Vermont, would suggest to the House that judging from the list of gentlemen who desire to be heard upon the question of privilege, of whom there are twelve, it would be almost impossible for the gentleman from Ohio, [Mr. HURD,] who has charge of this matter of privilege, to call the previous question before three o'clock, as he has already announced, and if thereafter an hour be consumed under the privilege allowed him under his motion, then it may be safe to assume that it will take another hour to do the voting on the question, which would bring it up to five o'clock.

Mr. HENDEE. I would inquire whether, if the House by unanimous consent or otherwise shall assign to the Committee for the District of Columbia Monday next, it is possible for the House by any proceeding or motion or any pending special order to take that day from us?

The SPEAKER. If the House assigns Monday next to the committee in a proper manner beyond question the right of the committee will attach as firmly and irrevocably as to-day, and the Chair would regard it to be his duty to maintain in that respect the faith of the House.

Mr. HENDEE. With that understanding I would have no objection to giving to-day to the consideration of the question of privilege.

Mr. STEVENSON. As a member of the Committee for the District of Columbia I desire to say that there are a number of bills of importance to be reported by that committee, especially the bill suggested by the chairman, [Mr. BUCKNER,] relative to taxation in this District. I do not agree with the chairman that to-night would be a proper time for considering such an important measure. I am perfectly willing as a member of that committee to give way for to-day, with the understanding that one week from to-day, at the same hour, the committee shall have the same privilege for the consideration of this business that it has to-day.

The SPEAKER. That is the motion pending.

Mr. STEVENSON. The chairman suggested to-night.

Mr. BUCKNER. I suggested a session to-night, if we could not get consent to the other arrangement.

The SPEAKER. The question is upon postponing till Monday next at two o'clock the consideration of business to be reported from the Committee for the District of Columbia, with the same privilege that the committee would have to-day under the rule.

The question was taken, and the motion was agreed to.

HABEAS CORPUS—HALLET KILBOURN.

The SPEAKER. The House will now resume the consideration of the unfinished business of Saturday, being the question of privilege reported from the Committee on the Judiciary.

The preamble and resolution reported from the Committee on the Judiciary were as follows:

Whereas one Hallet Kilbourn was subpœnaed to testify in a certain investigation ordered by this House before a committee duly authorized to send for persons and papers; and whereas during his examination as a witness the said Hallet Kilbourn refused to answer certain questions propounded to him as such witness by said committee, and to produce certain books and papers which he was ordered by said committee to produce; and whereas for such refusal the House of Representatives has adjudged the said Hallet Kilbourn to be in contempt of its authority and has ordered him into custody until he shall purge himself of said contempt and answer the questions as propounded and produce the papers and books ordered to be produced; and whereas said committee is still engaged in the investigation which it was ordered to make by the House, and is unable to complete the same because of the contumacy of the witness; and whereas the said Hallet Kilbourn is now in execution by the legal process of this House as aforesaid; and whereas the chief justice of the supreme court of the District of Columbia has issued a writ of *habeas corpus* to the Sergeant-at-Arms of this House to produce before the said judge the body of the said Kilbourn: Therefore,

Be it resolved, That the Sergeant-at-Arms be directed to make a careful return of said writ, setting out the causes of the detention of said Kilbourn, and to retain the custody of his body, and not to produce it before the said judge or court without further order of this House.

The substitute proposed by Mr. LYNDE, on behalf of the minority of the Committee on the Judiciary, for the preamble and resolution was as follows:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of *habeas corpus* in the case of Hallet Kilbourn that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Kilbourn before said court when making such return as required by law.

The amendment moved by Mr. JENKS to the original resolution was as follows:

After the word "Kilbourn," where it last occurs in the resolution, insert the following words:

And the irregularity of issuing the writ without a previous order *nisi*, or rule to show cause.

Mr. McCRARY. I was not a member of the subcommittee that considered this subject under the appointment of the Committee on the Judiciary; but I was present in the committee when the report of the subcommittee was discussed, and its discussion suggested to my mind— [After a pause.] I am advised that on account of other engagements of my colleague upon the Committee on the Judiciary, the gentleman from New York, [Mr. LORD,] it is desirable that he should speak first upon this question. I will therefore very cheerfully give way and follow him.

The SPEAKER. The gentleman from New York [Mr. LORD] will proceed, after which the gentleman from Iowa [Mr. McCRARY] will be recognized.

Mr. LORD addressed the House, but had not concluded his remarks, when

A MESSAGE FROM THE SENATE

was communicated to the House by Mr. GORHAM, their Secretary, informing the House that the Senate was sitting in its Chamber and ready to proceed with the trial of the impeachment of William W. Belknap, and that seats were provided for the accommodation of the members of the House.

HABEAS CORPUS—HALLET KILBOURN.

Mr. LORD resumed his argument, but before concluding said: I understand that the Senate is ready to proceed with the impeachment trial. I therefore ask that I may have ten or fifteen minutes more to conclude my remarks after we return from the Senate.

Mr. COX. I move that the gentleman from New York have leave to conclude his remarks hereafter.

There was no objection.

Mr. McCRARY obtained the floor.

IMPEACHMENT OF W. W. BELKNAP.

Mr. COX. I rise to a question of order. The question is suggested by members around me whether the House as a body should go to the Senate in the impeachment trial, the Senate having advised the House officially that it is ready to proceed with the trial.

The SPEAKER *pro tempore*, (Mr. SPRINGER.) The Chair will entertain any motion on that subject.

Mr. KELLEY. I would ask the gentleman from New York whether he has consulted the precedents as to what the usage has been?

Mr. COX. I remember very well that in the case of Judge Humphreys the House in a body went over to the Senate. I do not know how it was in other cases. I believe there are precedents on both sides.

Mr. KELLEY. I participated in two impeachment trials, and in each case the House went over for the first sitting.

Mr. KNOTT. I understand the practice as settled by the precedents to be this: That after issue is joined and a day fixed for the trial, the House upon that day proceeds in a body to attend at the bar of the Senate.

Mr. KELLEY. Such was the usage on the two occasions to which I have referred; the case of Judge Humphreys and the case of Andrew Johnson.

Mr. FRYE. I desire to ask the chairman of the Judiciary Committee if he did not notice that in the message received from the Senate they notified us that they have provided seats for members of the House. If that has been done, does it not seem to be required of us that we should accompany the managers?

Mr. LORD. I request the reading of the resolution of the Senate.

The Clerk read as follows:

IN SENATE OF THE UNITED STATES, *April* 17, 1876.

Ordered, That the Secretary inform the House of Representatives that the Senate is sitting in its Chamber and ready to proceed with the trial of the impeachment of William W. Belknap, and that seats are provided for the accommodation of the members.

Mr. LORD. Allow me to say that in an interview with Judge ED-

MUNDS, the chairman of the Committee on the Judiciary of the Senate, he stated that the Senate had determined to invite the House to come over to-day. This seems to be changing the rule, which, as has been stated by the chairman of the Committee on the Judiciary, was to go over upon the trial. For some reason the Senate has seen fit to change that rule and extend this invitation, and therefore I suggest that the managers at once take their places in the Senate Chamber, and that the House, headed by the Speaker, shall go over in response to the invitation of the Senate, seats having been prepared at considerable trouble, and as it will require considerable trouble hereafter we may as well go over to-day as at any other time. When the argument is made to the plea of jurisdiction, which I suppose is the argument first to be made, then all the members can leave who please, or the House can leave in a body when it pleases; but I suggest that, inasmuch as the Senate, with a knowledge of its own rules, has seen fit to extend this invitation to the House on this day, the House should go over in a body, headed by the Speaker; and I make that motion.

Mr. HOAR. I desire to say, Mr. Speaker, that I have consulted the precedents in this matter. In the Blount trial the House did not attend except on one occasion. It was represented entirely by the managers. On the trial of President Johnson, the Journal of the Senate sitting as a court of impeachment reads in this way:

The managers on the part of the House of Representatives attended and took their seats:

Then subsequently there is this entry:

The House of Representatives, in Committee of the Whole, preceded by the Chairman of the committee and attended by the Clerk and the Speaker, entered and took the seats provided for them.

It therefore seems to me that it would be most in pursuance of precedent and most in accordance with respect to the Senate and to the House itself that the House should this morning resolve itself into Committee of the Whole for the purpose of attending the trial, and should, headed by the Chairman of the committee and accompanied by the Speaker and the Clerk, proceed to the Senate accordingly. Hereafter it will be in the power of the House to determine, if it shall see fit, that it will proceed with its legislative business without attending the entire trial, and be represented there by the managers only, or on the other hand that it will attend the entire trial if it thinks that preferable. I will move now that the House of Representatives at one o'clock precisely resolve itself into Committee of the Whole, and as such committee attend the trial of the Ex-Secretary of War in the Senate Chamber, accompanied by the Clerk and the Speaker.

Mr. LORD. I accept that in lieu of my motion.

Mr. HOAR. On that motion I propose to call the previous question; but I will first hear the gentleman from Pennsylvania, [Mr. KELLEY.]

Mr. KELLEY. I desire to say a word or two in connection with this matter. It is not a point at all material, but in connection with the remarks that dropped from the gentleman from New York, [Mr. LORD,] I desire to say that on the two occasions to which I have referred this morning the House of its own proper motion attended its managers to the Senate Chamber, arrangements having been made for the accommodation of members. It seemed to the House then fitting that they should attend their managers at least for the opening of the trial. If I remember aright, in the earlier case, which I think occurred in 1862, the House took a recess of one hour that it might do that, and business was resumed at the end of the hour. The sense of the House appeared to be at that time that, as it preferred the articles of impeachment and designated its managers, it should attend in person those managers at least at the opening of the trial, and I would prefer going in that way than to going as a body, having no interest in the trial, but by reason of its dignity, having been invited by the Senate.

Mr. HOAR. I have here the Journal of the Senate sitting as a court of impeachment, and the record of the Senate on the day when the answers of the President were filed, which is what is expected to occur to-day in the case of the late Secretary of War:

MONDAY, *March* 23, 1868.

At one o'clock p. m. the Chief Justice of the United States entered the Senate Chamber, escorted, &c.

The Sergeant-at-Arms opened the court by proclamation.

The managers of impeachment on the part of the House of Representatives appeared at the door, and their presence was announced by the Sergeant-at-Arms.

The CHIEF JUSTICE. The managers will take the seats assigned to them by the Senate.

The managers accordingly took the seats provided for them in the area of the Senate to the left of the presiding officer.

The counsel for the President appeared and took the seats assigned to them.

The Sergeant-at-Arms announced the presence of the House of Representatives, and the Committee of the Whole House, headed by Mr. E. B. Washburne, of Illinois, chairman of the Committee of the Whole, and the Clerk of the House, entered.

The chairman and members were conducted to the seats assigned to them.

A later day's record shows the fact in like manner, except that it records that the House was accompanied by the Speaker as well as the Clerk.

Mr. COX. I suggest that we ought to have some understanding for the resumption of business at the end of this proceeding in the Senate, either a motion for a recess or that the House shall resume business at some fixed time.

Mr. HOAR. The Committee of the Whole will return, and the House will at once resume business.

Mr. GARFIELD. The committee of course must return, and the chairman will report.

Mr. COX. But there should be some fixed time.

Mr. GARFIELD. There cannot be any fixed time, as we do not know when the proceedings of the court of impeachment will terminate.

The question was taken on Mr. HOAR's motion, and it was agreed to.

Mr. KELLEY. Do I understand that the action of the House is equivalent to an adjournment of to-day's session, or would it be in order to move that a recess be taken for an hour?

The SPEAKER. The Chair understands this to be simply equivalent to a continuance of the session of the House in Committee of the Whole for the performance of a specific duty. The House is not adjourned, it is not in recess, but simply in Committee of the Whole for the performance of a specific duty which takes it out of the Hall of the House. When it returns to this Hall, having performed that specific duty, it will proceed with such business as properly comes before it.

Mr. KELLEY. Had we not better fix some time?

Mr. GARFIELD. You cannot do that.

Mr. RANDALL. We cannot fix any time for resuming business in this Hall until we know how much time will be required in the Senate. If we could know that in advance, then we could fix the time for resuming business in this Hall.

The SPEAKER. The gentleman from Pennsylvania [Mr. RANDALL] will please take the chair in Committee of the Whole. The Committee of the Whole, preceded by its chairman and accompanied by the Speaker and the Clerk of this House, will follow the managers of the House to the Senate Chamber.

Accordingly (at one o'clock p. m.) the House, as in Committee of the Whole, preceded by its chairman, Mr. RANDALL, and accompanied by the Speaker and Clerk, followed the managers of the House to the Senate Chamber.

[For proceedings while absent from the Hall of the House see Senate proceedings.]

At one o'clock and thirty-five minutes p. m. the Committee of the Whole returned to the Hall of the House.

The Speaker having resumed the chair,

Mr. RANDALL made the following report:

Mr. Speaker, the House, as in Committee of the Whole, pursuant to order, accompanied the managers on the part of the House to the Senate to be present at the opening of the impeachment trial of William W. Belknap, late Secretary of War.

MESSAGE FROM THE PRESIDENT.

A message from the President, by Mr. GRANT, his Private Secretary, informed the House that the President had approved and signed bills of the following titles:

An act (H. R. No. 111) granting a pension to David J. Garrett;

An act (H. R. No. 356) concerning cases in bankruptcy commenced in the supreme court of the several Territories prior to the 22d day of June, 1874, and now undetermined therein;

An act (H. R. No. 610) granting a pension to Seth A. Homestead;

An act (H. R. No. 2143) for the sale of the arsenal and lot at Stonington, Connecticut;

An act (H. R. No. 2450) to provide for a deficiency in the Printing Bureau of the Treasury Department, and for the issue of silver coin of the United States in place of fractional currency;

An act (H. R. No. 2482) for the relief of Charles W. Mackey, late first lieutenant of the Tenth Regiment Pennsylvania Reserve Volunteer Corps;

An act (H. R. No. 2655) to amend section 1044 of the Revised Statutes relating to limitations in criminal cases;

An act (H. R. No. 2800) to enable the Secretary of the Treasury to pay judgments provided for in an act approved February 15, 1876, entitled "An act providing for the payment of judgments rendered under section 11 of chapter 459 of the laws of the first session of the Forty-third Congress; and

An act (H. R. No. 2934) to provide for the expenses of admission of foreign goods to the centennial exhibition at Philadelphia.

HABEAS CORPUS—HALLET KILBOURN.

The SPEAKER. The House will now resume the consideration of the preamble and resolution reported from the Committee on the Judiciary concerning the *habeas corpus* in the case of Hallet Kilbourn. The gentleman from Iowa [Mr. MCCRARY] is entitled to the floor.

Mr. MCCRARY. I was about to say, when interrupted, that the discussion of this subject in the Committee on the Judiciary suggested to my mind such grave and difficult questions as to make it my duty, as I thought, to reserve for the time being my own conclusions upon them and give to them such personal examination as I might be able to do; and, although I have not been able to devote as much time and care to the investigation of the subject as I should have desired, yet I have reached the conclusion that the safe and proper course for the House to pursue is to adopt the report of the minority of the Committee on the Judiciary.

It will be observed by gentlemen who have looked into the subject that, when we are asked to refuse to send before the court issuing the writ the body of this prisoner, we are asked to do what no legislative

body in this country has ever done and what no legislative body in England has done for more than one hundred and fifty years. We are asked to do this, too, against the liberty of the citizen. If the subject presents difficulties, if the question is surrounded by doubts, I think it is our duty, as it would be the duty of a court of justice, to solve those difficulties and those doubts in favor of liberty.

Now, it seems to me that the real question in this case is the one which has received the least consideration. What is the case of Hallet Kilbourn as disclosed by his petition presented to the court? In brief, it is this: He sets out the whole record fairly and fully of the proceedings of this House in the investigation in the course of which he was called as a witness. He does this as the basis of the allegation, which he makes the foundation of his application, that the House of Representatives has no jurisdiction over the subject-matter of the inquiry in the course of which his imprisonment was ordered.

Now, sir, I am not going to stop here to discuss the question whether the House of Representatives has jurisdiction over that subject-matter or not. I know, sir, that there is much that may be said on either side of that question; but it is not for the House now to consider it. The question which this case presents, and which I wish to call to the attention of this House, is this: whether in any case where a citizen is imprisoned by order of one of the Houses of Congress the judiciary of the country upon a petition for a writ of *habeas corpus* may inquire whether that House of Congress has jurisdiction over the subject-matter of the proceeding in which the imprisonment was ordered? And if the House will stop to consider the importance of this question as settling, at least in a large degree, the law of the House upon this subject for all future time, it will be seen I think that this step ought not to be taken unless we are very sure that it is right.

It may be, sir, that no outrage has been committed against Hallet Kilbourn. It may be that this House has jurisdiction of the subject-matter of what is known as the real-estate pool investigation. It may be that the questions propounded to him were lawfully propounded, and that the House has a right to compel the answers to them. But we are establishing a precedent for all cases; and the extent of the precedent (if we adopt the report of the majority of the committee) is just this: that when a House of Congress shall lawfully or unlawfully, constitutionally or unconstitutionally, seize and imprison a citizen of the United States, there is no remedy for that citizen. This is the precedent we are asked to establish; for, let it not be forgotten, the position of the majority of the Committee on the Judiciary is that the courts have in no case a right to inquire whether the House has exceeded its powers in ordering the arrest and imprisonment. It follows inevitably that this doctrine would deny the benefits of the writ of *habeas corpus* to a citizen wrongfully, illegally, arbitrarily imprisoned by order of the House. His petition would be answered by the return that he is imprisoned by order of the House of Representatives, and that would be an end of the controversy.

Do gentlemen say it is not to be presumed that either House of Congress will ever wrongfully imprison anybody? But, sir, that argument begs the whole question. It may be just as well answered that it is not to be presumed that any court of justice upon whom Congress in its wisdom shall confer jurisdiction in cases of *habeas corpus* will ever refuse to return to the jurisdiction and control of the House a person properly held in a proceeding in which we have jurisdiction. We have a right to put extreme cases for the purpose of testing the soundness of the principle upon which we are proceeding; and, sir, I say that if the doctrine of the majority report is the correct doctrine, namely, that the House is the final judge as to the extent of its own jurisdiction and powers, then in every case where the House may act unjustly and arbitrarily, in violation of the Constitution, in the very teeth of the Bill of Rights, there is no remedy for the citizen. Sir, I should hesitate long before consenting to such a doctrine as that.

I had occasion to say a few words in opposition to the proposition to deliver over this prisoner to be tried upon an indictment before a court in the District of Columbia. I think that the action of the House upon that question was right. That, however, was a very different question from the one now before us. That was not a petition of the citizen himself to be released upon a writ of *habeas corpus;* that was not a proceeding based upon an allegation that this House had no jurisdiction over the subject-matter of the inquiry. On the contrary, its very foundation was that the House had jurisdiction and that this witness had failed to answer a proper question in a proper inquiry and was liable to be indicted and tried under the laws of the land therefor. That case presented simply the question whether instead of holding him and requiring him to answer we should turn him over to the court to be indicted and punished for the same act. I said, sir, in the course of that debate that in my judgment the decision of the House holding Mr. Kilbourn to be in contempt was final and not subject to review. So far as the question before the House at that time was concerned, that, I think, was a correct proposition. But I am satisfied upon more mature consideration that I stated the doctrine more broadly than I ought to have done; for, sir, if I understand the law concerning *habeas corpus*, the court which has the jurisdiction to issue the writ and to try the case may in all cases inquire as to the jurisdiction of the court or the officer that has ordered the commitment and imprisonment of the prisoner.

I think, sir, that the very authorities which the gentleman from Ohio [Mr. HURD] cited in his speech upon this subject will bear me out in this position, that the court may inquire as to the jurisdiction of the tribunal that has committed the prisoner. The gentleman read from Hurd on Habeas Corpus, page 38, as follows:

It is a rule essential to the efficient administration of justice that, where a court *is vested with jurisdiction over the subject-matter upon which it assumes to act* and regularly obtains jurisdiction of the person, it becomes its right and duty to determine every question which may arise in the cause without interference from any tribunal.

But, sir, it has no right to proceed unless it has "jurisdiction over the subject-matter upon which it assumes to act."

And again, the gentleman read from the same authority, as follows:

The right of punishment for contempts by summary conviction is inherent in all courts of justice and essential to their protection and existence. A commitment under such conviction is a commitment in execution, and the judgment of conviction is not subject to review in any other court, unless specially authorized by statute. It cannot be attacked under the writ of *habeas corpus*—

Does the authority stop there? No, sir.

It cannot be attacked under the writ of *habeas corpus except for such defects as render the proceedings void.*

And if the court which has ordered imprisonment had no jurisdiction of the subject-matter of the inquiry, then its proceedings are void.

Again, sir, my friend reads from the decision of the Supreme Court of the United States, in Kearney's case, (7 Wheaton, 44,) as follows:

The Supreme Court, in Kearney's case, after quoting from Mr. Justice Blackstone, says:

So that it is most manifest from the whole reasoning of the court in this case that a writ of *habeas corpus* was not deemed a proper remedy where a party was committed for a contempt *by a court of competent jurisdiction*, and that if granted the court could not inquire into the sufficiency of the cause of commitment.

From which it is clear that if the party was committed by a court not of competent jurisdiction the writ *is* an appropriate remedy.

And in all the authorities this very clear distinction will be found, that the inquiry may be made, not into the manner of exercising jurisdiction, not as to the propriety or impropriety of a particular question which may be put to a witness, but as to the jurisdiction of the court over the subject-matter of the proceeding, and where that is wanting, where it is made to appear to the court which issues the writ that there is no jurisdiction over the subject-matter, then the writ may issue and the prisoner may be discharged.

But we are told, sir, the House is the final judge of its own jurisdiction, and that no court can inquire as to whether the House has exceeded its jurisdiction. Let us see if that be true. This House has not unlimited power. The Constitution nowhere in words confers any power upon the House to arrest or imprison a citizen. It is only by implication we get any power of this kind at all. We have it as the necessary result of the power to legislate, of the power to make rules, of the power to punish or expel a member, of the power to impeach a civil officer of the Government of the United States; but we have it for no other purpose. Our power then, sir, is limited, and it is limited to a well-defined class of cases. And shall it be said that we of our own motion may go outside of any and all these powers, drag a citizen here, compel him to disclose his private business and his private affairs in an inquiry which we have no right to institute, which we have no right to carry on, over which we have no jurisdiction; that we may imprison him at our pleasure; and in such a proceeding as that the great writ of *habeas corpus* can afford him no remedy and no relief? Why, sir, if both Houses of Congress unite to pass a law and the Executive gives it his sanction so it becomes a statute of the United States, in form at least, yet by all the decisions of the courts of this country and by common consent the judiciary of this land is clothed with the power of inquiring whether the whole legislative department and the executive department have gone beyond the powers conferred by the Constitution of the United States in passing that law which may affect only rights of property. The courts have authority to annul your statute when your whole legislative department and the executive department have united to pass it; and yet are we to be told that a single branch of Congress, deriving its authority from the same Constitution, has the right to make an order by which a citizen may be deprived of his liberty; and, when it does, that there is no power in the judiciary to inquire whether that branch of Congress has gone beyond its jurisdiction?

Sir, by the logic of the committee's report we are led to the absurdity of saying that what both branches of Congress and the Executive in a matter affecting only the rights of property have no right to do one branch may do in a matter affecting the liberty of the citizen. Why, Mr. Speaker, even the Parliament of Great Britain—and nobody claims the Congress of the United States has the unlimited powers conferred upon Parliament—even the Parliament of Great Britain is subject to have its jurisdiction inquired into by the courts of that country in cases of this character. I wish to call the attention of the House to the decision of Lord Ellenborough, which is very long and very elaborate, of which I can only read a very brief extract touching on this point. It is the case of Burdett *vs.* Abbott, to be found in 14 East's Reports. I read from page 148.

Now to what extent it may be warrantable to inquire into the cause of commitment, it is not necessary to pronounce; the commitment must always be *by a court of competent jurisdiction;* and the competence of the House of Commons to commit for a contempt and breach of privilege cannot be questioned. A competence to commit for all matters and in all cases has never been asserted or pretended to on the part of either House of Parliament. The House of Commons does not pretend to a general criminal jurisdiction. But if the judges before whom those applications were made on writs of *habeas corpus* had felt that the houses had *no pretense of power to commit*, or had seen upon the face of the returns that they had ex-

ercised it in those cases *extravagantly and beyond all bounds of reason and law*, would they not have been wanting in their duty if they had not *looked into the causes of commitment stated*, and would it have been an excuse for a most imperfect discharge of their important duty upon the writ of *habeas corpus* to say that, though they remanded the prisoner, he had his remedy by action, if the case were that he ought never to have been committed at all? Is not the value of the intermediate liberty of the subject of such importance that, where his case falls within the remedy of the writ of *habeas corpus*, the judges were bound at common law to give the party the benefit of his immediate liberation rather than to turn him over to a distant remedy by action against a party who may die before he can obtain his judgment or, if he live, may become insolvent.

It seems, therefore, that even the jurisdiction of the Parliament of Great Britain may be inquired into by the courts of that country in cases of that sort.

Let me say here that the effect of the rule proposed to be established by the adoption of the report of the majority necessarily leads us to the assertion of the doctrine that in no possible case when either House of Congress commits a person for contempt can any court of the country inquire as to our jurisdiction! Because it would be a mockery to say to the court, "You may inquire into this question, and if you choose to decide we may hold this man, all right; but, if you decide the other way, we will disregard your mandate." That would be saying to the court, "You have jurisdiction to remand, but not to release." If the court has the right to decide that question, then the body of the prisoner must be taken into the presence of the court and surrendered to its jurisdiction, so that it may decide either one way or the other. That is inevitable.

But, sir, I say that the authorities in this country sustain the doctrine that the court applied to for the writ of *habeas corpus* may inquire as to the jurisdiction of the body that has committed the prisoner. There are two cases, Mr. Speaker, which have been decided by the supreme courts of two of the States of this Union, which involve the right of the judiciary of a State to inquire as to the jurisdiction of the legislative body of the State which has committed a witness for refusing to answer questions. In both of those cases the supreme courts of those States decided squarely and distinctly that the courts of the State had the right to inquire as to the jurisdiction of the legislative body. One of these cases was decided by the supreme court of Wisconsin, and the decision was read by my friend from that State, [Mr. LYNDE.] The other was decided by the supreme court of Massachusetts, and I desire to read briefly from the opinion of the court in that case, delivered by Mr. Justice Hoar.

Now let me premise, Mr. Speaker, that the question whether the courts of a State may inquire into the jurisdiction of one of the houses of the Legislature—State Legislature—in ordering a commitment is the same question exactly as that which is now before the House. The Legislature of a State has the inherent power to commit for contempt in all cases which come within the jurisdiction of the Legislature. I do not know, sir, but what in the State Legislatures the power is greater, because the range of legislation is much broader in State Legislatures than it is in Congress. But, at all events, the Houses of Congress have no greater power to commit for contempt than the houses of our State Legislatures. And yet in the only two cases in all this Union where the question has been raised as to the power of the courts to inquire into the jurisdiction of a legislative body of the State, it has been decided that the courts have that power. I read from Judge Hoar's opinion, 14 Gray, 240:

The house of representatives is not the final judge of its own powers and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court; that the house is not the Legislature, but only a part of it, and is therefore subject in its action to the laws, in common with all other bodies, officers, and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the constitution and laws, because, living under a written constitution, no branch or department of the government is supreme, and it is the province and duty of the judicial department to determine in cases regularly brought before them whether the powers of any branch of the government, and even those of the Legislature in the enactment of laws, have been exercised in conformity with the constitution, and if they have not been, to treat their acts as null and void.

Mr. HURD. I desire to ask the gentleman from Iowa one question. Did not the learned judge who delivered that opinion, when a member of the House in the last session of Congress, advocate and vote for a resolution in the Irwin case precisely the same in effect as that submitted by the majority of the Judiciary Committee of this House?

Mr. MCCRARY. I believe there was no vote taken on the proposition to which the gentleman refers; or, at least if there was, there was no record of it. But I am aware that the gentleman who delivered that opinion in the course of the debate and in a very brief speech made the observation that, if he were sitting as a court trying a man for a murder and another court should send a writ of *habeas corpus* to take the prisoner out of his hands, he would say he had other use for that prisoner just at that time. And in that I entirely agree with him. But, sir, that would not be a proper answer in all cases. It will not do to say that no other return shall ever be required of the House of Representatives, when it has imprisoned a citizen and when he has applied by writ of *habeas corpus* for a trial, than that the House has other use for that citizen at that time.

Sir, I apprehend that what the gentleman from Massachusetts, formerly a judge of the supreme court of that State, meant was this: That, assuming the jurisdiction of the House, assuming that it had a case in which it had a right to proceed, and that it was in the midst of its proceeding, it would have a right to make answer that it had use for the body of the prisoner and would not return him. I do not suppose that anybody believes that the writ of *habeas corpus* can be employed to take a prisoner out of the hands of a court which has jurisdiction over him when it is engaged in trying him. But, sir, I lay down the broad proposition that when a prisoner is confined in jail—and these are the cases which are covered by the statutes of the United States—when a prisoner is confined in jail he has a right to apply to any court that is authorized by law to issue a writ of *habeas corpus*, and to allege that the authority which put him in jail had no power to put him in jail; and when he makes that allegation the court has the right to have the prisoner brought before it and to inquire into that question.

Now, sir, the case stands thus: No legislative body in the country has ever refused to return the body upon a writ of *habeas corpus*. The Parliament of Great Britain has not for more than a century refused to do it. In the only two cases which have been decided by the supreme courts of the States on this question, it has been held that the courts might inquire into the question of jurisdiction. I think, sir, that, to say the very least of it, this raises a question of very great doubt, of very great difficulty. It presents a case where, if we decide to hold this prisoner, we decide against all the authorities, against every precedent in this country and against every one in England for more than one hundred years. And I think it presents a case where even if gentlemen have doubts in their minds they ought to resolve those doubts in favor of the liberty of the subject.

The supreme court of the State of New York have held the doctrine for which I contend in some cases to which I beg to call the attention of the House. In the case of the People *vs.* Cassels, in the fifth volume of Hill's Reports, in an opinion delivered by no less an authority than Judge Bronson, I find this doctrine laid down on page 168:

But the prisoner had an undoubted right to show that the committing magistrate acted without authority; and this is so notwithstanding the commitment recites the existence of the necessary facts to give jurisdiction.

And I call attention to the following from the same authority:

No court or officer can acquire jurisdiction by the mere assertion of it—

And what is it, Mr. Speaker, that this House now claims? What is it that is claimed by the majority of the committee except simply this, that this House can acquire jurisdiction over the body and the liberties of Hallet Kilbourn by the mere assertion of it? Nor is it the case of Hallet Kilbourn alone that we are trying. We are trying the great, broad question whether there is any authority or power in the judiciary of this country to review the action of the House when it asserts that it has jurisdiction to imprison a citizen.

No court or officer can acquire jurisdiction by the mere assertion of it, or by falsely alleging the existence of facts on which jurisdiction depends.

The court there, upon an inquiry and investigation, decided that the commitment was not made upon the trial of a case which the committing court had a right to try.

Again, sir, the same doctrine is laid down in the case of The People *ex relatione* Mitchell *vs.* The Sheriff of New York, in the second volume of Barbour's Reports, the syllabus in which is as follows:

On a *habeas corpus* in a case of commitment for a contempt, only two questions can be examined; first, as to the jurisdiction of the court or officer making the commitment; and secondly, as to the form of the commitment. If the jurisdiction is undoubted and the commitment is sufficient in form, and contains the cause of the alleged contempt plainly charged therein, the prisoner must be remanded and the writ discharged. The court has no power to inquire into the justice or propriety of the commitment.

Now, sir, the case of Ableman *vs.* Booth has been cited as authority for the refusal in this case to return the body. That case has no application whatever to this. The decision was simply this and nothing more: that a State court shall not be permitted to take the body of a prisoner out of the hands of a court of the United States, and that in such a case the marshal shall simply return the fact that he is held under process issued by a court of the United States and that shall be sufficient.

There was much difference of opinion, Mr. Speaker, in this country at the time that decision was rendered as to whether it was good law or not, and I think there will be no disposition, at least I think there ought to be no disposition, to extend the principle there laid down any further than the case required.

Here, sir, we have precisely the case which the statute contemplates, for the statute of the United States which Congress has enacted declares that this writ may issue whenever a prisoner is held in jail under or by color of the authority of the United States. That this prisoner is so held I think will be admitted by every gentleman upon this floor. Giving to the case of Ableman *vs.* Booth the full scope that any gentleman can claim for it, it does not reach or touch the question now before the House. This prisoner is held under color of the authority of the United States, and the statute expressly provides that when a prisoner is so held he is entitled to the writ and that his body shall be returned to the court.

The effect of the decision in the case of Ableman *vs.* Booth has been thoroughly considered in the opinion of the late Attorney-General Stanbery, and his opinion on the subject is recorded in the twelfth volume of the Opinions of the Attorneys-General. I will read a sentence or two from page 273:

The construction I have applied to the language used by the Supreme Court, confining the right to refuse production of the body to the case of a prisoner held under judicial process of the United States, is further fortified by authority in England and in the United States.

The English courts have admitted, as one exception to the duty of producing the body on *habeas corpus*, a return that the party was imprisoned "for treason or felony, plainly expressed," or was "convict or in execution by legal process."

This exception was admitted under an implication arising upon a clause in the first section of the act of Charles II. (Hurd on Habeas Corpus, page 254.)

Mr. Hurd adds: "This, however, is not only an exception to the general rule, but should be regarded as a particular indulgence; for if the officer had a right to stand upon his construction of the warrant of commitment there would have been but little gained by the act of 31 Charles II."

Nor can I understand the language of the court in Ableman *vs.* Booth, in reference to the exclusive jurisdiction of the United States, as applicable to any other jurisdiction over persons restrained of their liberty than that which depends upon jurisdiction acquired under process of the *courts* of the United States.

The late Attorney-General, who was one of the ablest of our Attorneys-General, has declared that the decision in the case of Ableman *vs.* Booth goes no further than to hold that where the prisoner is held under process issued by a *court* of the United States, a State court shall not be permitted to release him, and that this exception to the rule requiring the production of the body with the return can be carried no further.

My friend from Ohio [Mr. HURD] has also read from the decision of Judge McLean in the case of Robinson, quoting an extract from his opinion with a citation from Hurd on Habeas Corpus, page 347. I read the extract from his remarks as published in the RECORD:

That the commissioner had jurisdiction in the case is clear.

That is the very first sentence which the court lays down; and upon that the court proceeds to hold that the prisoner must be remanded. But the court inquired into the jurisdiction; the court decided upon the jurisdiction; the court declared the jurisdiction to be clear. The gentleman read also from a decision of the circuit court of the United States for the State of New York, from which he quoted as follows:

The recorder, therefore, had jurisdiction of the case, and authority to proceed in the inquiry whether the person so seized and brought before him doth, under the laws of the State from which he fled, owe service or labor to the person claiming him.

There, again, the first inquiry of the court was as to the authority to commit the prisoner, the jurisdiction of the subject-matter. The court decided that the recorder had jurisdiction, and upon so deciding proceeded to hold that the prisoner must be remanded.

Now it will not do to say, as several gentlemen have said, that we are surrendering the powers and functions of this House to a single judge of the supreme court of the District of Columbia. Why, sir, if there is anything wrong in the conferring of this jurisdiction upon that court, it does not lie in the mouth of Congress to complain. The law of Congress confers that jurisdiction upon the court; Congress by law has given to this court the authority to issue this writ. If it is not the proper court to exercise that authority, though I believe it is the highest court known to the laws of the United States except the Supreme Court of the United States itself, or as high as any other, yet if it is not the proper court to exercise that authority, let the law be so amended as to send all cases of this kind to the Supreme Court of the United States itself. But as it is the law, you can no more complain of the exercise of this jurisdiction by this court than you could complain of its exercise by the Supreme Court of the United States if it had been applied to for this writ.

Furthermore, if Congress does not mean that a writ shall issue under the statute for the release of a prisoner held by either House of Congress, let it be so provided in the law which we make, that it may be understood. As the law now stands it declares that the body shall be returned with the writ.

I do not desire to detain the House longer. I will simply repeat that even conceding that doubts can be raised as to the correctness of the course proposed by the minority of the committee, yet I think it is a safe course, it is in accordance with all the precedents, it is leaning, if at all, in the direction of the liberty of the citizen.

I know the importance of maintaining the right and power of the House to compel disclosures in its investigations in all proper cases. But I am not willing to believe that the judiciary of this country or the judiciary of this District will put itself in the way of this House in any legitimate and legal and constitutional inquiry. I am not willing to proceed here upon the assumption that the court which we have ourselves authorized to exercise this authority, to issue this writ, to possess this jurisdiction, is going to abuse its power and put itself in the way of Congress, so as to prevent the development or the disclosure of any facts which either House of Congress has a right to bring to light.

But if any court does so the House has the power of impeachment. And here is another reason why I think this law should be construed as requiring us to give up the body of this prisoner. If the court abuses its power, if the court tramples upon our right, we have power over that court. But if this body possesses this power, and if this body tramples upon the rights of the court, if it tramples upon the rights of the private citizen, there is no power anywhere to deal with us in a similar way.

I yield the remainder of my time to the gentleman from Maine, [Mr. FRYE,] my colleague on the Committee on the Judiciary.

The SPEAKER *pro tempore*, (Mr. SPRINGER.) The gentleman has five minutes of his time remaining.

Mr. FRYE. I do not desire to occupy the floor for that length of time.

Mr. MCCRARY. I have occupied more time than I intended. I ask unanimous consent that my colleague from Maine have further time.

Mr. FRYE. I do not know that I care about it now.

The SPEAKER *pro tempore*. The gentleman from Maine [Mr. FRYE] will be recognized after the gentleman from Virginia, [Mr. HUNTON,] now recognized by the Chair, has concluded his remarks.

Mr. HUNTON. I will yield my time to the gentleman from Mississippi, [Mr. HOOKER.]

Mr. HOOKER. Mr. Speaker, the question presented to the House is certainly one of very grave interest. And in saying what I have to say upon this subject I approach the discussion of it with no feeling at all so far as the person to whom it applies is concerned. I think it is important to the House in investigating and deciding this question to do it deliberately and carefully, with a desire to conform to what is the established law of the land. It is a matter of total indiffference as to who the person is to whom the proceeding refers.

I start out first with the proposition that the power exists in the House to do either one of two things, as it may see fit: The power exists in the House to surrender with the return the body of the prisoner or not to surrender it, as it thinks proper. In this particular case the principle has been invoked by the gentlemen who have discussed it upon the other side in favor of the minority report, based upon the sanctity of the writ of *habeas corpus* and the sanctity of the personal right of the citizen to be protected against unlawful imprisonment. I say that this is the idea which has been current in all the speeches which have been made on this subject. If I thought that the House in agreeing to the report of the majority of this committee were infringing upon the personal right of the citizen, and violating thereby his constitutional right to have his liberty protected, I should be very averse to giving my sanction to the report of the majority. But if the House possesses not the power to determine the question of contempt, and not so much to punish for an offense committed as to exercise such power of restraint over a recusant witness as shall bring him to obey the order of the House—I say if the House possesses not this power, and if it does not possess it because of the constitutional right of the citizen to his liberty, then this House, acting as a *quasi* court, and every court in the land would be powerless to conduct its own proceedings.

I will not go back to the question whether the judgment of the House was correct or not in reference to the question which was propounded to the witness, because that would be to go behind the judgment of the House, which is of record, and to open up again the question whether or not the House, through its agent the committee, had acted correctly in propounding the question to the witness. The judgment of the House that the party has been in contempt and the penalty which is imposed in the shape of imprisonment by way of restraint constitute an adjudication of the House upon that question which you cannot go behind.

At first, Mr. Speaker, this recusant witness, who had refused to answer the question propounded by the House, attempted to avoid and evade the penalty which the House had pronounced upon him for the purpose of compelling an answer by a resort to an indictment found in the criminal court of the District of Columbia. That indictment was presented here, and the *capias* of the court was issued upon that indictment, demanding the custody of the body of the party for the purpose of being tried for the offense under the statute. It was insisted then that under sections 102, 103, and 104 of the statutes in the revised code the power of the House no longer existed, because the Congress of the United States under the revision last made of the statutes had determined that the party could be and should be proceeded against for a misdemeanor in the criminal court of the District of Columbia, and that it was the duty of the Speaker of this House to certify the refusal of the witness to testify to that court. The answer which was very properly made is this: that that statute made it a misdemeanor for a party to refuse to answer, and the whole offense in its entirety was consummated, and was, as the French say, *un fait accompli* whenever the party had refused to answer. If he had relented on the very next day and had proposed to give his answer to the House, as the House was entitled to require of him, he would still have been amenable to the criminal courts for a misdemeanor committed in refusing to answer the question propounded by the House under the law. I say therefore that, when that proceeding was resorted to for the purpose of taking this party out of the possession of the House and its officers, the answer was very properly made, that the statute was simply cumulative, that it did not rob the House of its power to punish for contempt; and so the House decided.

Thus we have two adjudications of the House. First, it was decided that the party was guilty of contempt. Secondly, we have a solemn adjudication of the House, on this indictment being found and this demand being made, that the party could not be surrendered, because he was then undergoing the execution of the judgment which the House had pronounced against him; precisely as would be answered if one court were trying a party for a murder and the court of an adjoining district should issue its writ of *habeas corpus* demanding possession of the body of the party under his allegation in his sworn petition that he was illegally held in custody.

Will it be contended by gentlemen on the opposite side of this Chamber that this writ can in no instance be refused? Will it be contended, in the case which was put by the gentleman from Massachusetts, [Mr. HOAR,] that that party should be surrendered to

another and a different and a foreign jurisdiction? Why, sir, to do so would be in the very face of the *habeas corpus* act itself, which limits the cases to which the writ is applicable, and denies it in a case in which a party is being tried by a court of competent jurisdiction or is being punished under authority of such a court. If that doctrine were true it would apply to the case of every man imprisoned in the penitentiary, who might sue out a writ of *habeas corpus*. Who would say that in those cases the writ would lie?

But, sir, there is a different and a higher reason why the writ does not lie in a case in which a court is inflicting punishment for contempt. It has been said by the distinguished gentleman [Mr. McCRARY] who has just closed his address to the House—an address of marked ability—that you always test the validity of a principle by the supposition of an extreme case. Permit me, then, to test the position which he has assumed by supposing that upon the trial of a party for murder by a court of competent jurisdiction a single witness, having the sole knowledge of the transaction, refuses to testify to his knowledge of the offense. He is committed for contempt and then sues out his writ of *habeas corpus*, alleging that he is improperly in custody. Should that court therefore stop in the exercise of the only power it has to compel the giving of evidence in respect to an offense against the laws of the land? Should it allow another and a different and a foreign jurisdiction to determine whether that court was properly exercising its authority to punish for contempt?

Sir, if the position assumed be true, what a strange spectacle would be presented here! The subpœnas of this House are now running throughout the States and Territories of this broad Union, and wherever a witness refuses to obey such subpœna your writ of attachment or arrest is issued against the party so refusing. Is it true that when any such party in contempt of the House is in custody of your officer every court from Maine to California may stop the witness while *in transitu* to this House for the purpose of being examined, in order to ascertain by hearing upon *habeas corpus* whether the judgment of the House that the party is in contempt of its authority has been properly pronounced?

I am not aware, sir, that there has been a more pointed adjudication made with regard to this question of the power of the House to punish for contempt than was made by that distinguished jurist of Pennsylvania, Judge Black, who is now one of the counsel of the very party who is asking by the writ of *habeas corpus* a surrender of this prisoner. It was asserted by gentlemen that there was no case in which the court had undertaken to decide that the question as to whether the body assuming to punish for contempt possessed the power and jurisdiction of the subject-matter of the question could be adduced. I say that I have found nowhere any opinion so clear, so concise, and so pointed as the opinion of Judge Black rendered in Passmore Williamson's case, to be found in 26 Pennsylvania State Reports, which has been already cited in the progress of this debate. That opinion is expressed, as he usually does, in those plain, simple, forcible Anglo-Saxon terms which carry conviction whenever he speaks now, or whenever he uttered his adjudication in the tribunals over which he presided with such distinguished ability. I ask the attention of the House while I read an extract from the decision in that case, and which is so especially applicable to the very point which the House has now before it. In that case Judge Black says:

> It is most especially necessary that convictions for contempt in one court shall be final, conclusive, and free from examination by other courts on *habeas corpus*. If the law was not so our judicial system would break to pieces in a month. Courts totally unconnected with each other would be coming in constant collision. The inferior courts would revise all the decisions of the judges placed over and above them. A party unwilling to be tried in this court need only defy our authority, and, if we commit him, to take out his *habeas corpus* before an inferior judge of his own choosing, and if that judge is of opinion that we ought not to try him, there is an end of the case.
>
> This doctrine is so plainly against the reason of the thing that it would be wonderful indeed if any authority for it could be found in the books. There is none, except the overruled decision of Mr. Justice Spencer, of New York, already referred to, and some efforts of the same kind to control the other court, made by Sir Edward Coke in the King's Bench, which are now universally admitted to have been illegal as well as rude and intemperate.

And in conclusion, speaking upon the very question presented by the gentleman from Iowa, [Mr. McCRARY,] who last addressed the House, he uses this language:

> On the other hand we have all the English judges and all our own declaring their want of power to interfere with or control one another in this way. I content myself by simply referring to some of the books in which it is established that the conviction of contempt is a separate proceeding and is conclusive of every fact—

I call the attention of the House particularly to this language—

> and is conclusive of every fact which might have been urged on the trial for contempt, and, among others, want of jurisdiction to try the cause in which the contempt was committed.

Thus you have the positive and emphatic adjudication of this distinguished jurist, that the point made by the gentleman who last addressed the House is not well taken, in his estimation at all events, namely, that the courts do not possess the power under writ of *habeas corpus* when a party is brought before them to pass upon the question of jurisdiction. Sir, if that were the case, your Speaker might be taken from his chair in this body by violence, and the parties who did it—if the writ of *habeas corpus* would lie in a case like that—would defy the authority of the House to punish them; and any other disorder, or any other contempt, or any other violence committed toward a member might be committed in your presence and yet, according to the theory of gentlemen who have spoken upon this floor in favor of the minority report, you would be powerless to punish for contempt manifested in open, broad daylight and before your eyes. The House would then be powerless to punish, and any tribunal might inquire whether it had the power to do so or not. I say such a doctrine would be utterly subversive of the organization of the House, and would at once put a fatal stop upon any effort you might make to investigate any question.

My attention has been called to still further passages in this same opinion of Judge Black, to which I beg very briefly to refer:

> But the counsel of the petitioner go behind the proceedings in which he was convicted, and argue that the sentence for contempt is void because the court had no jurisdiction of a certain other matter—

Mark you this language—

> because the court had no jurisdiction of a certain other matter which it was investigating or attempting to investigate when the contempt was committed. We find a judgment against him in one case, and he complains about another in which there is no judgment. He is suffering for an offense against the United States, and he says he is innocent of any wrong to a particular individual. He is conclusively adjudged guilty of contempt, and he tells us that the court has no jurisdiction to restore Mr. Wheeler's slaves.
>
> It must be remembered that contempt of court is a specific criminal offense. It is punished sometimes by indictment and sometimes in a summary proceeding, as it was in this case. In either mode of trial the adjudication against the offender is a conviction and the commitment in consequence is execution. (7 Wheaton, page 38.) This is well settled, and I believe has never been doubted. Certainly the learned counsel for the petitioner have not denied it. The contempt may be connected with some particular cause, or it may consist in misbehavior which has a tendency to obstruct the administration of justice generally. When it is committed in a pending cause the proceeding to punish it is a proceeding by itself. It is not entitled in the cause pending, but on the criminal side. (Wallace, page 134.) The record of a conviction for contempt is as distinct from the matter under investigation when it was committed as an indictment for perjury is from the cause in which the false oath was taken. Can a person convicted of perjury ask us to deliver him from the penitentiary on showing that the oath on which the perjury is assigned was taken in a cause of which the court had no jurisdiction?

And further, this judge proceeds to remark:

> Would any judge in the Commonwealth listen to such a reason for treating the sentence as void? If, instead of swearing falsely, he refuses to be sworn at all, and he is convicted, not of perjury but of contempt, the same rule applies, and with a force precisely equal.

So that even as to that point it will be seen that this decision emphatically lays down the rule that in a case of that sort, which was simply a proceeding in court, the party cannot escape because of his allegation that the tribunal which assumes to punish for contempt possessed not the jurisdiction of the subject-matter about which it was considering when the contempt was committed.

I think, however, Mr. Speaker, that there is another and a higher and a better reason than this for the rule of law, which I undertake to assert is uniform upon the subject, that every court and every parliamentary body, sitting as a *quasi* court, must have, and the Parliament of England always has had—the power to protect its own organization precisely as every court has the right to protect its own order and its own authority in the conduct of the cases before it. And if this principle is true with reference to different tribunals, possessed of equal power, *a fortiori* it is true with regard to the highest court in the land, sitting and making investigations with regard to affairs of public concernment, in which the interests of the whole people are involved in bringing to light the facts of the case.

Why, sir, it was said by the distinguished gentleman from Pennsylvania [Mr. KELLEY] on Saturday that in the case of Irwin, which occurred in the last Congress, there was proof *aliunde* that Irwin had some knowledge on the subject about which the committee were investigating him. Are we to be told that the rule with regard to a witness and the power of the House to coerce a witness is to depend on the power of the House to prove that the party possesses knowledge? In other words, the argument is that you must convict Kilbourn of possessing knowledge. The gentleman from Ohio made the argument that no one said, either by affidavit or say-so, that Kilbourn possessed information which would lead to impeachment. The idea therefore is, convict the witness of possessing the knowledge, establish that in the first place, and then, forsooth, you have a right to demand the witness's knowledge. But then you do not want it. If there is proof *aliunde* by which you can establish what you want Hallet Kilbourn to show, then Hallet Kilbourn is not necessary. It is because the information which the House desires and the House demands is probably within the breast of this particular witness in regard to the facts inquired of that it is important the power of the House should be exercised to coerce an answer.

But I proceed to the consideration of this question so far as it affects parliamentary bodies; and I must do so with brevity, because of the fact that I have but little time in which to address the House. I desire to call attention very briefly to the principle of law which is laid down upon this subject (Jefferson's Manual included) in Barclay's Digest, where it is condensed and very easy of reference, and then to the principle laid down by Mr. Cushing as it affects parliamentary bodies. On page 62 of the Manual this position will be found to be assumed, and the authorities quoted in favor of it:

> If an offense be committed by a member in the house of which the house has cognizance, it is an infringement of their right for any person or court to take notice of it till the house has punished the offender or referred him to a due course. (Lex Parliamentari, page 63.)

And if I can have the attention of the distinguished gentleman who last addressed the House, I will say that the true distinction which

runs through all these cases is that when a contempt has been committed before this House, the House primarily and of right, and as essential to its very existence, possesses the power to punish. And the right of any other court or any other tribunal to inquire into the fact as to whether the party has committed an offense may occur after the punishment has been inflicted by the House but not before; and this, too, not only with reference to a member, but with reference to a witness before the tribunal.

I refer to page 231 of Barclay's Digest, in which this principle is laid down:

The failure or refusal of a witness to appear, or refusal to testify, is a breach of the privileges of the House, and has been punished by commitment to the custody of the Sergeant-at-Arms, by expulsion from the floor as a reporter, and by commitment to the common jail of the District of Columbia.—*Journals*, 1, 12, pages 276, 277; 2, 33, pages 315, 318; 2, 34, pages 269, 277, 281, 384, 567; 1, 35, pages 371, 387—389, 535—539.

So it will be observed, Mr. Speaker, in answer to the argument of the gentlemen on the opposite side, that this is an effort on the part of one House under the parliamentary law to do that which it is asserted both Houses could not do under a law regularly passed and approved by the Executive. But the gentlemen forget that there is already upon the statute-book a law passed by both Houses and approved by the Executive clothing each House with the power to punish; which was unnecessary, because, as I will presently show, this power inherently exists in parliamentary bodies as a very necessity of their life, and without which they would be in a more terrible state of collapse than the distinguished judge in Pennsylvania said the courts would be when he used those strong, powerful, terse, old Anglo-Saxon words and said, if the rule is held that the court possesses not the power to punish for contempt, then you would not only have collisions between courts, but your judicial system would break to pieces in a month.

We have now in the Revised Statutes, sections 101, 103, and 104, these provisions:

SEC. 101. The President of the Senate, the Speaker of the House of Representatives, or a chairman of a Committee of the Whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in any case under their examination.

SEC. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

SEC. 104. Whenever a witness summoned as mentioned in section 102 fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

So that, if there was any need to strengthen the parliamentary power of the House by an act of Congress regularly passed through both branches of the national Legislature and approved by the Executive, it stands upon our statute-book. But, as I have said, this act, this defining the duties of witnesses and the power of the House, it is claimed to clothe a subordinate court of the District, a creature of Congress, breathed into existence by our own statute, which to-morrow you have the power at once to do away with—that that court, inferior to the power that created it, with reference to a question of contempt, can supersede the power of this House itself, or of the other House of Congress, and determine questions of contempt upon evidence not occurring in its presence, but simply on the oath of the witness.

I proceed now briefly to refer to the authorities in Cushing on Parliamentary Law, and first I will refer to page 246. He has referred to the privileges of this kind which accrue and belong to each branch of a legislative assembly, and there are enumerated some thirteen in number. Preceding that statement he says:

The privileges of this kind which belong to each branch of a legislative assembly may be classified and arranged under the following heads:

And the thirteenth specification is as follows:

To be free from all interference of the other co-ordinate branch and of the executive and judiciary departments in its proceedings on any matter depending before it.

This is the summing up of the doctrine as to the power of either House to proceed for contempt against a recusant witness.

He says:

One of the modes by which a legislative assembly obtains a knowledge of the facts upon which its orders, resolutions, or acts are founded is by the examination of witnesses, who, when a proper occasion occurs, may be summoned and examined, as in the ordinary courts of justice.

In section 645 the same principle is laid down. He lays down the law upon the subject as to how far this power of investigation and decision is exclusive and final in the House itself.

In that section he says:

This jurisdiction being conferred for the purpose of enabling a legislative assembly to discharge its peculiar functions in a free, independent, and intelligent manner is in its very nature *original, exclusive, and final.*

Final how? Final because no other tribunal can investigate the question whether it properly discharges its duties. To allow it to do so would stop all investigations in every legislative body.

Again, sir, he gives a reason for it:

It is exclusive; otherwise the objects for which it is conferred, namely, the freedom and independence of the assembly, would fail of their attainment, inasmuch as a portion of the means by which the assembly is enabled to perform these functions would be restrained by the concurrent or appellate jurisdiction of some other tribunal.

Again he says in section 649:

The jurisdiction of a legislative assembly acting judicially is necessarily final; that is, its proceedings cannot be revised nor its judgment suspended by any other court or tribunal. Thus when a member is expelled no other court can revise the doings of the assembly and re-instate such member in his place. So if a legislative body commit a member or other person as a punishment for a contempt or other offense, no other court or tribunal can discharge the prisoner on the ground of his having been illegally committed, provided the cause of the commitment appear with the requisite certainty. In cases of this kind, therefore, it should clearly appear in the warrant that the assembly has jurisdiction of the matter for which the commitment takes place. But the particular facts of the case upon which the assembly has predicated its judgment should not be stated. If they are they will be subject to revision.

Thus clearly implying that, where the return was that the party was adjudged guilty of contempt without assigning the particular cause, there was no power of revision or discharge.

Sir, I might read from a number of other sections of the same authority, but I will allude to one other portion only, in which he is treating, not on the question of the privileges of legislative assemblies, but upon the questions of the privileges of the question of State assemblies in the case of recusant witnesses.

In section 967 I find these words:

In regard to the phraseology of the questions which are put to a witness and the language of the answers returned by him while under examination, it is to be observed, on the one hand, that the witness *is in the protection of the House;* that no question ought to be permitted to be put to him which is couched in disrespectful terms and that no insulting or abusive language or conduct toward him ought to be allowed; and any member, counsel, or party who in examining a witness should insult or abuse him would subject himself to the censure and punishment of the House. On the other hand, it is the duty of a witness to answer every question in a respectful manner, both toward the House and toward the member, party, or counsel by whom he is examined. If a witness, forgetful of his duty in this respect, gives his answer in an indecorous or disrespectful manner the usual course is for the Speaker to reprimand him immediately and to caution him to be more careful for the future. If the offense is clearly manifest the Speaker will proceed at once to reprimand and caution the offender; if not, the witness may be directed to withdraw, and the sense and direction of the House may then be taken upon the subject.

I wish to call the attention of the House now to what has been laid down upon the subject of the difference between public documents and private papers, because it has been said that this is a drag-net thrown over this witness with the design and intention of compelling him to produce the papers. I will state the rule of law as to the distinction rather than weary the House with reading it. The rule is that where it is a public document which the House desires to obtain it is produced by an order of the House, and where it is a private paper in the possession of a private citizen who is a witness its production is obtained in precisely the same way that the *subpœna duces tecum* of any court obtains it, by compelling the party to produce the paper.

Now it has been asserted that this is an effort to compel this party to testify with regard to his private affairs, which would not be allowed in a court of justice, unless some foundation was laid for it. But in a court of justice that rule applies to parties litigant, who have no right to look at the papers of their adversaries, except upon an affidavit regularly filed, stating their relevancy to the subject-matter then pending before the court for adjudication. But does that rule apply to a legislative body making an investigation for the public benefit and the public weal? Does it apply to a witness before a committee of this House, and must you necessarily, before a subpœna can issue with authority to bring the person with the papers, make out a case against him by the affidavit either of your Speaker or of a member of this body? Surely not. Such a rule was never contended for until now; such an idea has never prevailed in any adjudication which has been made in reference to this subject. This author, proceeding to discuss this subject, says:

The difference between proceedings in Parliament and the ordinary courts has been established upon grounds of public policy, and is considered to be fundamentally essential to the efficiency of a parliamentary inquiry. But while the law of Parliament thus demands the disclosure of the evidence, it recognizes to the fullest extent the principle upon which the witness is excused from making such disclosure in the ordinary courts of justice, and protects him against the consequences which might otherwise result from his testimony; the rule of Parliament being—

And it is the rule of this House—

the rule of Parliament being that any evidence given in either house cannot be used against the witness in any other place without the permission of the house, which is never granted, provided the witness testifies truly. The parliamentary law on the subject is declared embodied in the following resolutions of the House of Commons, adopted in 1818:

That witnesses examined before the house, or any committee thereof, are entitled to the protection of this house in respect to anything that may be said by them in their evidence.

I will not read the other resolution. So it will be perceived that this author lays down the rule with reference to investigations in public assemblies, like the Parliament of England or the Congress of the United States, that the same rule does not apply that exists in ordinary courts of justice.

This question has undergone investigation in several courts of the Union other than those referred to by gentlemen who have spoken in favor of the minority report. They have said that the power exists somewhere to make inquiry as to whether or not this House has acted within the scope of its authority in pronouncing this party guilty of contempt. Cases have also occurred in courts of States, as in the State of Mississippi, where the constitution of the State makes the writ of *habeas corpus* a writ of right, always available by prisoners; also in States where the constitutions and laws of the States make it an offense

punishable by impeachment and dismissal from office for a judge to refuse to grant the writ of *habeas corpus*.

I desire now to call the attention of the House to a case which was decided in reference to one of the courts in a State where the constitution and laws were such as I have stated. It was a case not with reference to the action of the Legislature or either house of the Legislature. It was a case decided with reference to the power of an inferior tribunal to pass definitely upon and forever settle the question of contempt. It occurred not in a criminal proceeding, but in a case which was civil in its nature, where a guardian had refused to account to the probate court for the property of a ward which had passed into his possession, and had refused to file with the court a final account showing the condition of the accounts between the guardian and the ward. This case will be found in 7 George's Mississippi Reports.

A process of attachment issued from the probate court, possessing jurisdiction in testamentary questions and questions of administration. That attachment was served upon the party, and he still refused to answer. He was imprisoned by the court, and he sued out a writ of *habeas corpus*. The case went to the supreme court of Mississippi upon an appeal from the action of the probate court in passing upon the question of contempt. In that case the supreme court of Mississippi held that the inferior court passing upon the question of contempt, though it was a question whether the party was guilty of a contempt simply in the matter of accounting in dollars and cents, still the adjudication of the inferior court was final, conclusive, and decisive, and was not even subject to review by a court with appellate power over the inferior court. To say that that is not so, that that is not the true rule of law, would be to enable any party litigant or any criminal in an inferior court to stop the proceeding *in medias res* until the question could be adjudicated by the court of last resort whether he had been guilty of contempt or not.

Now, who ever heard of the doctrine that in the case of any court passing upon the question of contempt, and a witness who had seen the most flagrant crime committed, but positively refused to testify, had been imprisoned for contempt, according to the theory of the gentlemen supporting the minority report of the Committee on the Judiciary, it would be in the power of that party to stop the investigation and have the inquiry first by the inferior court as to whether he was guilty of contempt or not, and then if it was in a State where the constitution of the State provided that an appeal should be had in all cases, then and in that case the investigation would have to be stopped until the appellate court itself had decided whether a contempt had been committed or not? As I have said, if the principle contended for is true, then all investigations into the corruptions of this time, which the gentleman from Pennsylvania [Mr. KELLEY] calls the "dry rot" of this age, and which others have called festering sores upon the body-politic, numerous as they may be, flagrant as they are, and now the subject of inquiry by various committees of this body, may be stopped *in limine* in order to ascertain whether the House possesses the power to coerce a witness to answer.

Mr. KELLEY. If the gentleman will permit me, I disclaim the elegant phrase, "dry rot." I did not use it.

Mr. HOOKER. I rather think the gentleman must have used that expression. He probably has forgotten it. He uses so many elegant expressions that I know he does not remember them all.

Mr. KELLEY. I spoke of a citizen being held in a bastile to rot.

Mr. HOOKER. Probably that was it. But, in answer to that, permit me to say that Mr. Kilbourn has the key of his prison in his own pocket, or rather in his own mouth. Whenever he chooses to obey the order of this House he can unlock the door of that prison and walk out into the free air and sunshine. His imprisonment is of his own seeking and his own imposition. This House has done nothing more than indicate its own self respect and protect its very existence by putting him there until he shall be compelled to answer; for, as Mr. Cushing has remarked, that is the only punishment which is inflicted upon him. He is not punished because he has not done any particular act except refusing to answer. He may purge himself of that contempt and unlock his prison-door to-day if he wishes to do so, by coming into this House and answering the questions which have been propounded by your committee.

I was about to proceed to comment upon the authority of the case to which I referred, and I beg to state, without reading, that it was a question not of a criminal nature except in so far as it gave the court the power to imprison for contempt. It was a question in which a guardian refused to account, and the probate court imprisoned him for contempt. He took an appeal to the supreme court of the State; and one of the judges of that court, a man who added to his large learning, that highest ornament of the judiciary, an eminent conscientiousness in the search after truth in any and all questions or cases coming before him, Judge Harris, pronounced the opinion of the court after argument by able counsel. This doctrine is laid down by him:

> But it may perhaps be asked if each court is suffered to exercise the power of punishing contempts without control and revision of any other court, where is the security of the citizen—

The very question which has been propounded by the gentlemen on the opposite side—

> where is the security of the citizen against the oppression of the judge by a willful infraction of the law? It is answered that the citizen finds security—

As I have just remarked Mr. Kilbourn could—

> finds security in his own correct demeanor; in the great lenity and unwillingness which has generally been remarked in courts to resort to this exercise of their powers; but above all, in that responsibility which the judge owes to the assembled representation of the country for any corrupt or willful and arbitrary abuse of his power. It is the boast of our Government that no officer, however exalted his station may be, is above the law; neither can he indulge a wild, arbitrary, or licentious disposition without responsibility.
>
> Government cannot be administered without committing powers in trust and confidence. The exercise of discretion must be intrusted by the people to some agents in matters of this character. And it seems to us to be safer and more satisfactory under our system to leave it in the hands of the respective courts immediately deriving their authority from the people and amenable to the public for its just and wise exercise than to place it in the hands of an appellate tribunal removed in a great measure from their scrutiny as well as their direct authority.

This was a case in which it was assumed by the counsel on the part of the appellant that the supreme court of the State of Mississippi, being an appellate tribunal, with power to review the action of the inferior courts, had the power to review the action of this court with regard to the imprisonment of that guardian.

In this decision the various authorities on the subject, including the English authorities, are fully cited. Among others the case of the Earl of Shaftesbury, 2 State Trials, 615, who was imprisoned by the House of Lords for "high contempt committed against it." The case being brought into the King's Bench, the court held that they had no authority to judge of the contempt and remanded the prisoner. Chancellor Kent, referring in the case of Bates, 4 Johnson's Reports, to this decision in the Earl of Shaftesbury's case, says:

> The court in that case seem to have laid down a principle from which they have never departed, and which is essential to the due administration of justice. This principle, that every court, at least of the superior kind, in which great confidence is placed, must be the sole judge, in the last resort, of contempts arising therein, is more explicitly defined and more emphatically enforced in the two subsequent cases of The Queen *vs.* Paty *et al.*, 2 Lord Raymond, 1105, and of The King *vs.* Crosby, 3 Wilson, 188; 2 Blackstone, 754.

The supreme court of Mississippi, referring to this question, says:

> In Crosby's case, the language of the judges is singularly impressive. Lord Chief Justice De Grey observed that when the House of Commons adjudge anything to be a contempt, or a breach of privilege, their adjudication was a conviction, and their commitment in consequence was execution; and that no court could discharge or bail a person that was in execution by the judgment of any other court.

The body of Hallet Kilbourn is in execution by judgment of this House for contempt; and it will not be denied, I suppose, that this House sitting as a *quasi* court ranks equal in dignity with any other court known to our Constitution or laws.

The opinion of Mr. Justice Blackstone is also quoted; but as it has been already referred to, I will not read it.

Chancellor Kent, after all these citations, adds:

> I have cited the opinions of other judges much at large, because I could not hope to improve upon the strength of their observations; and I entertain the most perfect conviction that the law, as they declared in this case, was well understood, and definitely established as part of the common law of England at the time of our revolution. Mr. Justice Grose, many years afterward, thought he did enough to prove the statement of the law on this subject by merely quoting this very able decision of Lord Chief Justice De Grey.
>
> These cases were also considered and reviewed by Cowen, J., in the supreme court of New York, nad approved as declarative of the common law of England. He says "that it was agreed in the mayor of London's case (Crosby, 3 Wilson, 188) that in cases of commitment for contempt by the Lords or Commons, or by any other court of general jurisdiction, no other court had power to interfere, and relieve by *habeas corpus* or in any other way, because there was no appeal.

Justice Blackstone lays down the doctrine thus:

> The sole adjudication of contempts and the punishment thereof in any manner belongs exclusively and without interfering to each respective court.

Again he lays down the doctrine:

> The right of punishing contempt by summary conviction is inherent in all courts of justice and legislative assemblies, and is essential for their protection and existence. It is a branch of the common law, adopted and sanctioned by our State constitution. The discretion involved in this power is in a great measure arbitrary and indefinable, and yet the experience of ages has demonstrated that it is perfectly compatible with civil liberty and auxiliary to the purest ends of justice.

These are the remarks of the courts in England in commenting on this power, and they expressly referred to it not only as existing in courts alone but as existing in Parliament, and they say that the experience of two hundred years has sanctioned the doctrine that the best ends of public justice and of human liberty are subserved by adhering to these adjudications.

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. HOOKER. I will only occupy a few minutes longer to conclude what I have to say.

The SPEAKER *pro tempore*. The Chair hears no objection, and the gentleman will proceed.

Mr. HOOKER. Now, Mr. Speaker, let me read in conclusion:

> Our laws are not thus deficient. While they amply protect the liberty and rights of the citizen, they as amply provide for the prevention and punishment of the wrongs he may seek to inflict.
>
> Let the appeal be dismissed—

Why, Mr. Speaker? For what cause?

> for want of jurisdiction in this court.

Thus you have the decision of an appellate court declaring it could not review the action of an inferior court over whose proceedings and over whose judgments and all its decrees it had power to sit in any other cause. The courts say, in adjudging for contempt these tribunals must of necessity, as an element of their very life, possess the power of punishing for contempt.

We have seen a variety of devices resorted to to get this witness

out of the possession of the House. First an indictment was found by the circuit court of the District of Columbia, and under that this drag-net—and we have heard in this debate frequently of "drag-nets" being thrown out—this drag-net of judicial proceedings was resorted to for the purpose of taking this witness out of the possession of the House and taking away from the House the power and authority to continue its investigation. When that failed, then this great writ of human right and liberty, which was so dear to our English ancestors, from whom we derive the great body of our laws, and which is regarded with such sanctity by tribunals in our own country in every State—this great writ of right, the writ of *habeas corpus*, is resorted to. But it has been clearly shown by the arguments already made that where a party is undergoing judgment of a competent court for contempt, undergoing the judgment of a court of competent jurisdiction, the right to resort to the writ of *habeas corpus* does not exist. Let us not therefore, by hesitating and paltering in a double sense with this question, furnish another illustration that he who is backed by the power of eminent counsel or who can array money and friends in his support and at his back can set at defiance the highest tribunal of the land engaged in investigating questions so pertinent to the public welfare and public weal. Let us not furnish another illustration of the saying of the great English dramatist:

> Plate sin with gold,
> And the strong lance of justice hurtless breaks;
> Arm it in rags, a pigmy's straw doth pierce it.

Mr. FRYE. Mr. Speaker, I did intend to discuss to a certain extent the legal propositions involved in this case, but the lateness of the hour and the absolute necessity of taking a vote on this question to-night is a reminder to me I must be brief. The authorities have been cited, the question has been discussed with signal and remarkable ability, even for the House of Representatives, and therefore I will forbear from discussing at all the questions of law involved and simply address myself to a few practical suggestions to the House in relation to the question at issue.

Now, sir, I was here in 1871 at the spring session, and the President of the United States sent to this House a message in which he declared that justice was invaded, that the rights of citizens were not protected, that citizens of the United States were being murdered, outraged, and deprived of all their rights under the law and the Constitution; and he asked the Congress of the United States to enact the necessary legislation to enforce the constitutional amendments. And what, sir, did I witness? I saw the democratic side of the House united to a single man for two long months, fighting night and day, fighting constantly and filibustering for two weeks, and for what? Why for the right under the writ of *habeas corpus*, and against the proposition of the republicans in this House that we should give the President authority to suspend that writ of *habeas corpus*. Again during the last session of the last Congress, when the proposition was made by the majority of this House to give the same right to the President of the United States to suspend the writ of *habeas corpus* and protect American citizens in their liberty and their lives, the same democratic unity existed. They fought for a fortnight, and the gentleman from Pennsylvania [Mr. RANDALL] gained a world-wide reputation for the skill and power with which he led the forces of the democratic party against the right which the republicans asked that the President might suspend the writ of *habeas corpus*.

Now ever since I have known anything of the political history of the democratic party it has been entirely consistent in this view, that under no circumstances, for no men, for no court, no where shall the writ of *habeas corpus* be suspended and the citizen deprived of the liberty afforded to him by the laws and Constitution.

Now I am met with this new aspect of affairs. I find the gentleman from Mississippi [Mr. HOOKER] and the gentleman from Ohio [Mr. HURD] and the gentleman from New York [Mr. LORD] and the majority of a democratic committee reporting to this House and advocating in this House—what? Why, a proposition to entirely suspend the writ of *habeas corpus* as to this House and the other House. It is an exceptional case, it is said. O, no; it is not exceptional at all. You have got from thirty to forty investigations going on this very day while I am speaking. You are summoning here from all parts of the country from ten to twenty American citizens every day that this Congress is in session. Your committees are propounding to them any questions which may suggest themselves to the minds of the gentlemen on the committees; and there is a liability that you may not only have one American citizen but you may have a hundred American citizens where to-day you have got Hallet Kilbourn.

What is the bald and naked proposition, gentlemen, which you are advocating here to-day? Why, that it is in the power of the House to imprison an American citizen, right or wrong; that it is in the power of the Senate of the United States to take an American citizen, put him in jail, and keep him there for life, right or wrong; and the question of right and wrong, as is asserted by the gentlemen who have spoken on that side, has nothing whatever to do with it. Has it come to this, that the democrats of this House are prepared to say that an American citizen may be deprived of his liberty whether he is guilty of any wrong or not? Why, sir, if Hallet Kilbourn was right in refusing to answer the questions propounded to him, then you were wrong when you put him in jail.

Gentlemen say that the House adjudicated that he was guilty of contempt, and you cannot go behind that. How did you adjudicate that he was guilty of contempt? You demanded the previous question. You allowed no debate. You called the matter up before this House, and in five minutes of time you adjudged without debate that this citizen was guilty of contempt, and you sent him to jail.

O, what a magnificent power that would be for Congress to have! How, by means of it, we could dispose of these correspondents who interfere with us now and then! Take the committee of which my friend from Pennsylvania [Mr. CLYMER] is chairman. The correspondents of the newspapers have treated that committee, in my judgment, very unjustly in many things. I know they have treated the chairman of that committee with injustice, because I know him to be a thoroughly honest and upright man. Now, he has every reason to feel aggrieved and outraged at what has been written to the newspapers of the country in relation to him and his committee. What a splendid opportunity this affords that committee to redress all their wrongs! Let them call any newspaper correspondent before it, ask him any question under the sun, it makes no difference what—ask him "Who struck Billy Patterson?"—and if he declines to answer report him to the House, demand the previous question, refuse debate, commit him to jail, and then determine that your power is without limit and nobody can inquire into it.

Why, sir, we can dispose of any gentleman who insults our dignity in an hour's time, without the slightest difficulty. The lawyers on this floor know perfectly well that they can badger any gentleman brought before any committee so as literally to compel him in defense of his own manhood to refuse to reply to the interrogatories that are propounded to him. And what a chance this gives for the Senate, too! The doings in executive session of the Senate have been divulged by newspaper men, and there is great grief that the discussions in executive session should appear before the country. Just make this a law of the land, and they can settle all that matter without any difficulty. They can take the correspondent of the New York Tribune, or of any other newspaper, and ask him what Senator informed him of the secrets of the executive session; he will decline to answer; then put him into jail, and there is an end of him. You may keep him there for life; you can punish him all he ought to be punished. There is no trouble about it all.

Now, sir, I have agreed to occupy but a very few minutes upon the floor, and I simply desire to say this with regard to Mr. Kilbourn: I hardly know the man myself; I do not know his politics; but it does seem to me beyond a peradventure that there is a very serious doubt about our right to hold him. The gentleman from Massachusetts [Mr. HOAR] admits the doubt. The gentleman from Ohio [Mr. HURD] in his speech admitted the doubt. The very discussion upon the floor admits it. Now, there is a rule of law that in the construction of a statute relating to liberty you must construe it liberally. Are we doing any more than right and justice to give Mr. Kilbourn the benefit of this doubt which this very discussion shows to exist in this House to-day? Let him go before the court; and then, I trust, if the court returns him here, that a resolution will be offered and passed at once giving him his liberty without day.

Mr. HURLBUT. Mr. Speaker, I think it is very well that this House should come back to the consideration of the single question before it. We have listened to a great deal of eloquence relating to a matter which to my mind seemed to be entirely remote from the pending question. There has been a great deal of learning displayed as to the derivation of the power of the House—a power properly described by the gentleman from Massachusetts [Mr. HOAR] as arising from the necessity of things; an inherent power; a power improperly described by the gentleman from Ohio [Mr. HURD] as a power dependent upon precedents and the customs and usage of the English Parliament.

The customs and usages of the English Parliament are not the law of this land. The precedents in favor of liberty in the English Parliament since 1744 are indications tending to show the course the American Congress should adopt, but the old principles of England are invoked by men deyning the rights of personal liberty. Now, sir, a certain thing we all agree upon, that the House has power in any matter which is properly within its own jurisdiction to call witnesses before them, to examine those witnesses and to exert the power of the House to enforce attendance and to enforce answers, and that we agree upon. But there is a possibility that this House may be mistaken. There is an undoubted limitation upon the power of this House as to the character of the subject-matter of the investigation submitted to it. There are rights belonging to individual men, rights guaranteed by the Constitution, rights to guarantee and to secure which the Constitution was made. The Constitution of the United States was not made to guarantee the prerogatives of this House, but it was made to protect the rights of the individual man. It was made for the weak, not for the strong; and it would be far better, in my judgment, if this House should devote itself somewhat more to the consideration of the duties that devolve upon it, rather than the assertion of doubtful privileges.

But, sir, we have exercised a power. Whether we have wisely exercised it or not, I do not care to discuss now. We have exercised it and said by our resolution that this man, Hallet Kilbourn, shall be committed to the common jail of the District until he shall purge himself of a contempt. What then? Hallet Kilbourn by being committed to jail by the House of Representatives has lost no rights that belong to him as an American citizen. He applies to the courts of

the country and asserts a certain right, the foundation of liberty in England and in this country. He applies to a court constituted by the law in a case prescribed by the law itself. He presents his petition, and that petition must be judged of by the judge of the court and not by us. The judge is compelled under the law to examine that petition, and if he finds cause to issue a writ of *habeas corpus*, he is under penalties if he does not do so. The judge, acting under the law and under his official oath, under the penalties prescribed by the *habeas corpus* act if he neglects his duty, issues this writ and the writ issues to the Sergeant-at-Arms, the representative of this House, commanding him to bring the body of Hallet Kilbourn before the court together with the cause of commitment.

Now, sir, the single question before the House to-day is whether the House of Representatives will obey the plain provisions of the law and send the body before the court. The law requires it; the language is plain, undeniable, imperative, and conclusive, and any gentleman who takes the opposite side of this case necessarily claims that the House of Representatives is above the law of the land, a doctrine which for one I am not inclined to admit.

That is the single question presented now, whether or not this writ shall be obeyed according to its terms by our officer in producing the body of the party detained before us in order that the court may pass upon the question as to his rights. That is the one question presented; but the resolution of the majority, if I remember it correctly, requires the Sergeant-at-Arms to disobey the writ; in substance it undoubtedly does.

Now there is one other consideration which I would like to put before the House in the brief time that is allotted to me here, and that is, what would be the probable results of the adoption by this House of the doctrine contained in the majority resolution? This House certainly has no control over the judicial decision of any judge. The judge himself is and ought to be unfettered and free to carry out the law as he believes it to be. If this judge construes the law as I should if I were in his place, he would refuse to recognize the return made by the Sergeant-at-Arms of this House as not being a compliance with the plain terms of the statute, and were I in his place I should proceed to hold the officer who disobeyed the process of the court, whether he was an officer of this House or of any other body, as not only in contempt of the law but in contempt of the great writ of *habeas corpus*. Now suppose that shall be done, by what process now known to the law do gentlemen ever expect that their officer and Sergeant-at-Arms is so be relieved from that contempt. If I understand correctly the doctrine stated by the gentleman from Mississippi [Mr. HOOKER] he read authorities to prove that the determination of any court upon a question of contempt was binding upon all other courts except in cases where the court holds appellate jurisdiction. If that be so there is no remedy for our Sergeant-at-Arms. In that case the burden of power is all upon the other side. We are placed in the position of asserting what at all events is a doubtful power when the weight of the law and of the judicial tribunals of the country and of the Executive who is bound to sustain these judicial tribunals is against us.

Now, because these things are dangerous; because I believe that this writ ought to be obeyed in precisely the terms in which it is given; because I believe that no court that respects itself under such circumstances would take cognizance of a return without having the body produced in court and that the court has the right to have the body there; and because I believe that the jurisdiction of this House over the subject-matter, and thereby over the man whom they hold, is a subject which by the law of the land can be properly inquired into by any court, I hold that this House, laying aside all merely partisan relations—to which I would not now refer—laying aside all those questions that are thrown in here charging that the obedience of the law of the land will defeat this investigation, will consider this question upon a fair and honest and correct basis; that is, that in this country of ours there is but one thing that is sovereign, and that is the law; and that that law binds the Executive, the Senate, the House, the judicial officers, and all citizens; and that outside of the provisions of law there is no safety for liberty and a great deal of opportunity for tyranny.

MESSAGE FROM THE SENATE.

A message from the Senate by Mr. SYMPSON, one of their clerks, announced that the Senate had passed and requested the concurrence of the House in a bill of the following title:

A bill (S. No. 472) changing the times of holding terms of the district court for the district of West Virginia.

The message further announced to the House that the Senate had disagreed to the amendment of the House to the bill (S. No. 472) changing the time of holding the terms of the district court for the district of West Virginia.

The message also announced that the Senate had adopted a resolution setting the time for the trial of William W. Belknap, late Secretary of War, upon articles of impeachment exhibited against him by the House of Representatives, and transmitted to the House a copy of the plea of the said Belknap.

IMPEACHMENT TRIAL OF WILLIAM W. BELKNAP.

Mr. HOAR. I ask unanimous consent that the communication from the Senate sitting as a court of impeachment and the copy of the plea of the Secretary of War be referred to the managers on the part of the House.

There was no objection, and it was so ordered.

HABEAS CORPUS—HALLET KILBOURN.

The House resumed the consideration of the report of the Committee on the Judiciary on the subject of the writ of *habeas corpus* in the case of Hallet Kilbourn.

The SPEAKER *pro tempore*. The gentleman from Virginia [Mr. TUCKER] is entitled to the floor.

Mr. TUCKER. I do not propose to launch upon the wide sea of debate which we have had upon this subject for two days. I will preface my remarks by an amendment which I propose to offer, which amendment is perhaps out of order, unless the gentleman from Pennsylvania [Mr. JENKS] will withdraw the one he has proposed, which I understand he is willing to do.

Mr. JENKS. I will withdraw my amendment for the purpose of allowing the gentleman from Virginia [Mr. TUCKER] to offer the one he indicates.

Mr. TUCKER. I offer the amendment which I send to the Clerk's desk to be read.

The Clerk read as follows:

Strike out all after the word "Kilbourn," where it occurs before the word "therefore," at the close of the preamble, and insert the following:

And whereas the facts stated in the petition and complaint of said Kilbourn present the question whether the said writ could lawfully and properly be issued, and whether the same was not therefore improvidently awarded: Therefore

Be it resolved, That the Sergeant-at-Arms of this House be directed to appear by counsel before the said court and make a motion to quash or dismiss said writ, or take such other proceedure as he shall be advised is proper to raise the question of the legality and propriety of the issue of said writ, upon the facts stated in the petition or complaint and as preliminary to any return to the same; and in the mean time he is directed to retain the custody of the body of said Kilbourn, and not to produce it under the order of said writ without the further order of this House.

Mr. TUCKER. I believe, as I said the other day, that the commitment of this man Kilbourn for contempt of the authority of this House was right. I believe that the questions that were propounded to him in reference to those who were interested in the real-estate pool involved so necessarily the quantum of interest of Jay Cooke & Co. in the real-estate pool, in whose assets the United States are deeply interested in the proceeding in bankruptcy, that the question of who were the parties to the real-estate pool was a pertinent inquiry, and that the refusal of the witness to answer that question put him in direct contempt of the authority of this House.

I am so well satisfied of that, that I am just as well satisfied that any court that respects law or respects precedents, English or American, upon the fact appearing in any way to it that the party is held in custody by reason of his contempt, will at once under *habeas corpus* remand the custody of his body to the keeping of this House. And I go further, so well satisfied am I that the English and American precedents sustain that proposition, that, if any judge in this land should decide otherwise, he would bring himself very nearly within the alternative or dilemma either of knowing nothing about the law or corruptly defying it.

Now in the few remarks that I will address to the House I desire to say that so far as I am concerned as to this amendment which I propose it is not necessary for me to determine the extent of the powers of this House in respect to punishment for contempt. Whether the power be punitive or merely remedial is perhaps not necessary to inquire, although I am frank to say that the inclination of my mind is that this House, in committing for contempt, is only exercising a remedial jurisdiction, a coercive jurisdiction, and not a punitive jurisdiction.

This party having been committed for contempt of the authority of this House, the question is, Can this writ issue or ought this writ to have issued? Upon that question I have before me the Revised Statutes, and I will read a passage quoted from chapter 13, section 755, by the gentleman from Massachusetts [Mr. HOAR] the other day:

The court, or justice, or judge to whom such application is made shall forthwith award a writ of *habeas corpus*, unless it appear from the petition itself that the party is not entitled thereto.

Now I apprehend that our relations to the writ of *habeas corpus* issued in this case is just the same substantially that it would be to any suit brought against our Sergeant-at-Arms. The Sergeant-at-Arms may plead either to the jurisdiction, or demur, or plead to the issue, plead in bar. If he pleads to the jurisdiction, it is on the ground that the court has no jurisdiction to issue the writ at all or to issue the writ in this particular case. If he demurs, it would be on the ground that upon the facts appearing in the petition itself the court had no right to award the writ; and that is the ground upon which I put my amendment. If he makes a return to the writ it is in the nature of a plea—gentlemen will excuse me for the forensic phrase—a plea in confession and avoidance; that is to say he confesses he has the party in his custody, but he avoids any subjection to the order of the court upon the ground that it is a legal custody.

Now, if he makes return the court may say, as it did say, I understand, in Irwin's case, "How can we adjudicate in respect to the subject-matter in controversy, which subject-matter is the body of the petitioner, unless you bring the subject-matter before the court?" In Irwin's case the Sergeant-at-Arms made return that the prisoner

was held under an order for contempt. In this case the House has made no return at all; and I propose it shall make no return until the preliminary inquiry has been made and presented to the court. That preliminary inquiry is presented by the Sergeant-at-Arms in this form: "I plead to your jurisdiction. By the law you cannot issue this writ; for upon the face of the petition there is no right on the part of the petitioner to have it issued; and in the nature of a demurrer, admitting all the facts stated in the petition, I deny that there is any right on the part of the petitioner to this writ."

Now what are the facts stated in the petition? I do not know that they have been produced before this House; but they have been published in the papers. I understand that the petition sets out all the facts of the case—sets out the fact that the party has been committed for contempt of the authority of the House in refusing to answer a question. Now, mark you, upon that petition it appears that he is held in our custody upon our judgment that he is in contempt; and the precedents upon that subject are absolutely overwhelming. In the case of The Queen *vs.* Patty, 2 Lord Raymond's Reports, 1105, where Chief Justice Holt dissented, the court said that there could be no objection to the form of commitment by the House, and, if for contempt, no objection that the contempt does not appear on the face of the warrant, or, even if it did appear, that in the judgment of the court it was not sufficient contempt for commitment; in other words, that as soon as we plead that in our judgment this party has been in contempt it concludes the matter and precludes judicial inquiry.

The question has been discussed and mooted here, how long can we hold this man in custody for contempt? Upon that question permit me to say, by way of parenthesis, that we can hold him only till the close of the session. Until the end of the session the House is regarded constructively as pressing its inquiry upon the conscience of the witness. As soon as the House adjourns the inquiry is withdrawn. The party can no longer be in contempt of its authority and no custody for contempt can therefore endure beyond the session. Upon this point I have the authority of an English court, to which I beg leave to refer, and I trust that in an American Congress the liberty of the citizen is no less dear to us than the liberty of the subject is to the Court of Queen's Bench in England. Her Majesty's court says, in Stockdale *vs.* Hansard, 31 English Common Law Reports, 67:

> The privilege of committing for contempt is inherent in every deliberative body invested with authority by the Constitution; but however flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalty, yet his offense being committed the day before the prorogation, if the House orders his imprisonment but for a week, every court in Westminster Hall and every judge of all the courts would be bound to discharge him by *habeas corpus*.

That is to say, wherever the power of this House goes to the imprisonment of a man one moment beyond the extent of this privilege, the power of every court and every judge in the land is bound to discharge the party upon *habeas corpus*. And I think that if Mr. Pat. Woods could hear this he would know that he had been imprisoned unjustly and unconstitutionally by this House.

Such being the precedents, I think the law upon this subject is perfectly clear, that as soon as it is made known to this court here in this District that this House, representing the commons of the country, holds a party in contempt of its authority in custody, that court in obedience to its oath is bound to remand him to our custody.

My friend from Pennsylvania [Mr. JENKS] proposed the other day an amendment which is in accordance with all the precedents in the Supreme Court, to this effect: that the court should be asked to make an order for a rule upon the Sergeant-at-Arms to show cause why the writ should not issue. My amendment embodies the same idea, although it is perhaps more definite in form. As it appears by the very petition of the party himself that he is held in custody for contempt of the authority of this House and by its order, I propose that as a preliminary to any return of the body as being legitimately within the jurisdiction of the court, we should raise the point that upon the face of the petition the court had no right to issue the writ; that it has been improvidently awarded and should now be quashed. In that way we avoid the question which we have been discussing for several days and present the issue plainly and nakedly to the decision of the court.

Mr. GARFIELD. Will my friend allow me one question? He has read the section of the statute which says that "the court or justice or judge to whom such application is made shall forthwith award a writ of *habeas corpus* unless it appears from the petition itself that the party is not entitled thereto." Now I ask, unless it appears to whom?

Mr. TUCKER. To him.

Mr. GARFIELD. To the judge, or to us of the House?

Mr. TUCKER. To the judge.

Mr. GARFIELD. Then, as a matter of course, he is to be the judge of that.

Mr. TUCKER. Very well.

Mr. GARFIELD. If it be within his discretion as a judge to determine that question, and as he has within his discretion determined it, and determined he must issue the writ and has issued it, how can the gentleman now deny it is interfering with the power of that judge's discretion for us to insist he should not have issued it?

Mr. TUCKER. Well, sir, there is this discretion: The judge is very potential, indeed, when we cannot question his divinity so far as to say: "Judge, we think you nodded when you made that order, and we now ask you, because it was improvidently made, to quash it."

Mr. HOAR. Will the gentleman from Virginia permit me to further suggest in reply to the gentleman from Ohio that the judge never adjudicated that question, as appears upon the face of the petition and papers before the Judiciary Committee.

Mr. GARFIELD. He did *pro forma*.

Mr. HOAR. Neither *pro forma* nor otherwise.

Mr. TUCKER. Certainly.

Mr. GARFIELD. Must he not then go forward and adjudicate it with the party before him?

Mr. HOAR. The judge therefore has issued a writ of *habeas corpus* and we are dealing with one improvidently issued.

Mr. TUCKER. This is the point and the gentleman from Ohio says that we cannot——

Mr. HOAR. I beg the gentleman's pardon for again interrupting him.

Mr. TUCKER. Go on.

Mr. HOAR. I am informed in point of fact that the judge refused to hear the petition read before he issued the writ.

Mr. TUCKER. I think he must have refused to hear the petition read. We must require him to read both.

Mr. GARFIELD. We refused to hear the case before we acted on it.

Mr. TUCKER. No, sir, we did not refuse to hear the case; but we will see that the judge of the District court of the district of Columbia shall hear the house of commons of America, and when the house of commons of America makes a motion to quash a writ improvidently awarded by the judge here that he shall hear the motion and he shall decide it.

Now, sir, suppose we make that motion. There is no requirement that the body shall be produced on that motion. He has no right to require it to be produced, for the very motion itself denies his power to have issued the writ and to have required us to plead by return.

Mr. GARFIELD. The judge held in the case of Irwin that he would not hear the motion to quash until the body was produced.

Mr. TUCKER. I only mean to say that it shows if he refuses to hear—I see the gentleman from Ohio moving off, and I desire that he shall hear me.

Mr. GARFIELD. I do.

Mr. TUCKER. If he refuses to hear the motion it will show that corruption has spread from the "real-estate pool" even to the tainting of the ermine of the courts of the District. [Applause.]

Mr. GARFIELD. We have as good a right to say the statement the gentleman makes could only be made when corruption had reached clearly into this House. [Applause.]

A MEMBER. There is no doubt about that.

Mr. GARFIELD. I would not say that.

Mr. TUCKER. I did not hear the gentleman's remark. I suppose it was not personal to myself. The applause in the galleries was so loud I could not hear it.

Mr. BURCHARD, of Illinois. Let me suggest that in the Irwin case the judge required before he would hear the motion the production of the body. He required, before he would hear the return or the motion to quash which was made, the production of the body, and when the body was produced and the return made the prisoner was remanded to the custody of the Sergeant-at-Arms.

Mr. TUCKER. I have heard all that can be said on that subject on the other side, and I will go on. I say that, as I understand it, in Irwin's case the Sergeant-at-Arms made a return to the writ, but did not return the body; and that then on the motion to quash the court said, "I will not hear any motion until you respect the writ which I have issued by making a return of the body." The point I make is this: I would order the Sergeant-at-Arms to make no return, not to plead to the issue at all, not to admit the jurisdiction of the court to have issued the writ, but to move to quash it as improvidently awarded.

Mr. BURCHARD, of Illinois. In that very case the very point was made by the counsel on behalf of the House of Representatives, that the writ was issued improvidently. That very point was made before the case came on the second time, and the court held that the body must be produced, and then on the next day these proceedings were held and he remanded the prisoner.

Mr. TUCKER. Mr. Speaker, I do not care what the judge did upon a former occasion. But under the amendment which I propose, and which I believe ought to be adopted, he should be made to answer to the motion which we make to quash it, because he had no right to issue it.

Mr. BLAINE, (in his seat, in undertone.) Should be "made to?"

Mr. TUCKER. Be made to. Yes, sir.

Mr. BLAINE. How?

Mr. TUCKER. Made through his conscience, if he has one, and by a power that is superior to him, if he has not.

Mr. BLAINE. Excuse me. I thought the language of the gentleman was very extraordinary, that the judge should be "made" by the House of Representatives to do anything.

Mr. TUCKER. The gentleman is no lawyer, as he has often shown in this House, [laughter and applause,] and the gentleman is perhaps unaware that when a court will not execute his duty he may be made to execute it.

Mr. BLAINE. By an order of the House?

Mr. TUCKER. Not by an order of the House. That shows the gentleman is no lawyer. By a writ of mandamus from a higher court that will compel him to exercise a jurisdiction that he is reluctant to exercise.

Now, Mr. Speaker, if I can get through these friendly interruptions—because I never knew a man to disturb a nest that there was not a great deal of fluttering all about it—I will be permitted I suppose to proceed so far as to say that if my amendment is adopted it will present the question to the court in such a manner that he cannot avoid deciding the question upon the facts appearing in the petition, which the gentleman from Massachusetts says he decided upon without reading.

Now, sir, what is the difficulty here? What is the reason that there is any trouble about this matter? Because there seems to be a grave suspicion that the court of the District of Columbia would not do its duty in this case. Far be it from me to throw that suspicion on any man who wears the judicial ermine until he shall have shown a reluctance to perform his judicial duty. But I say that lest this should be the case, I have prepared a bill which on the first opportunity I propose to present to the House that I think will meet the unanimous concurrence of this House, that in all cases where a party is under the order of either House of Congress, committed to custody for contempt or for any other reason, the only court that shall have the power to issue the writ of *habeas corpus* in such a case shall be the Supreme Court of the United States. To this authority I, in common with my friends all around, from the South as well as the North, and I have no doubt in common with the other side of the House, would be willing to bow. There is no trouble about bowing to their decision as to the extent of the constitutional powers of this House.

While, Mr. Speaker, I have hurried very rapidly through what I have to say in favor of this amendment, I hope it will be adopted, and that it will remove the difficulties which have arisen in the course of this discussion, and will have the effect of quieting them, and presenting the point on which the House will decide.

Mr. BLAINE. Will the gentleman allow me one moment?

Mr. TUCKER. Yes, sir.

Mr. BLAINE. I am permitted kindly by the gentleman to say that I had no intention whatever of doing anything else than making a conversational interruption which the gentleman made the occasion of a fling, and I had no wish or purpose to take part in the debate. The expression was involuntary on my part. I do not know anything in the relations between the gentleman from Virginia and myself that called for the discourtesy with which he treated me. But so long as I am on the floor and twitted with not being a lawyer, I will say to the gentleman I thank God I am not a lawyer trained in the school he was. I thank God I am not a lawyer like the gentleman himself, who, as attorney-general of the State of Virginia, gave an opinion that the local authorities of that State might invade the post-office and compel the postmaster to give up the contents of the mail. I thank God that I am not that kind of lawyer. [Applause.]

I go a little further. The gentleman represents—and with great ability, I will do him the credit to say—that which is known as the great State-rights school that receives its chief inspiration from Mr. Jefferson and the other great lights of Virginia. And yet, sir, he stands here to-day to plead that this House possesses a power over which there is no review anywhere except such as it makes itself. Now, Mr. Jefferson said expressly in a letter, which I recall and could find if I had time, that this Government was so constructed that the absolute power rested nowhere, and he defied any man to show that in any department of this Government anywhere there was absolute power. You take the ultimate judgment of the Supreme Court, which seems absolute. You take the pardoning power of the President, which is without question. Let these powers be misused or abused and there is the power of impeachment, arrest, and punishment. But the gentleman from Virginia, inheriting and professing to represent the principles of Jefferson, says that this House may take anybody on any pretense that may commend itself to its judgment and imprison him at their pleasure, and that there does not exist in the laws to-day the slightest power of relief or review. I thank God again I have not learned law in that school. [Applause.]

Mr. TUCKER. Mr. Speaker, I have no hesitation in saying in reply to the gentleman from Maine that what he took as a fling at him in reply to a conversational and undertone interruption was not intended to be in any degree offensive. I thought that the gentleman from Maine had clearly to his own consciousness some weeks ago in a discussion between himself and the distinguished gentleman from Mississippi [Mr. LAMAR] shown that whatever else he might be, and whatever else he might be fitted to be, and whatever other position he might be fitted to fill by the suffrages of his countrymen, there was one thing he had never been trained to be, and that was a lawyer; and I merely meant to say, though I do not intend to be discourteous to any gentleman upon this floor at any time—I merely meant to say that I thought the gentleman had demonstrated again as he did upon that occasion very signally that he was not a lawyer. But, sir, there is one thing that he is if he is not a lawyer, and that is, sir, he is a Pharisee. [Laughter and applause.] He said thank God——

Mr. BLAINE. That I am not as the gentleman from Virginia.

Mr. TUCKER. The gentleman says he thanks God that he is not as I am, and I thank my heavenly Father that there is no resemblance between us. [Great applause.] I say amen with all my heart to that. He thanks God that he is not as other men are, even as this poor publican. [Laughter and applause.]

Mr. BLAINE. The late attorney-general of Virginia.

Mr. TUCKER. The late attorney-general of Virginia, sir. I am proud to have represented the old Commonwealth in that office; I am proud to represent the old Commonwealth upon this floor. I remember the opinion to which the gentleman from Maine refers, and it seems to me that instead of studying the laws of his country the gentleman has been studying up to see if he could not get points upon his colleagues upon the committee and members upon this floor with which he might twit and taunt them when the occasion arose. I really did not expect that that opinion would be referred to. I think it was made *pendente bello*.

Mr. BLAINE. No, it was before the war.

Mr. TUCKER. Very well, it was a good opinion whenever it was given. [Laughter and applause.]

Mr. BLAINE. The gentleman will please state what it was?

Mr. TUCKER. Then it was *ante bellum*. I am not to be misled in this debate. I have no objection to stating what it was. It was in effect that what mail matter a citizen of a State could receive was a question for State laws.

Mr. BLAINE. That was it, and the gentleman holds to it to this day, I understand.

Mr. TUCKER. I do hold to it to-day.

Mr. BLAINE. That the Post-Office Department can be interrupted in performing its duties by a country justice of the peace in a State; that was the opinion.

Mr. TUCKER. I hold to that opinion yet, and the gentleman has shown that he is no constitutional lawyer when he does not recognize a distinction which is as old as the decisions of Judge Marshall, as far back as the case of Gibbons *vs.* Ogden, in which, and in other cases, it has been held that, between the commercial power of the Federal Government and the police power of the State, the margin and the distinction were as wide as the poles, and so wide that I had supposed even the undisciplined mind of the gentleman from Maine might have seen it. [Laughter and applause.]

Mr. BLAINE. Where does the power of the General Government through the Post-Office Department end and the State power begin?

Mr. TUCKER. I am glad to say that while there is an old adage that a child—and I believe the adage goes a little further than that, although I will not attribute the rest of it to the gentleman from Maine—that a child may ask a wise man a great many questions that he cannot answer—nor do I attribute to myself the quality of wisdom—yet if the gentleman will read for his delectation the great case of Brown *vs.* The State of Maryland he will find the distinction as to when goods cease to be imports and become commodities within State jurisdiction drawn with so much nicety by Chief Justice Marshall, that Judge Taney, then at the bar and counsel in the case, dissented from it, although he afterward acceded to it as just and sound.

Mr. BLAINE. Does the gentleman treat post-office matter as "goods?"

Mr. TUCKER. Ah, well! I did not know; but I thought, though the gentleman was no lawyer, he had probably read some books on logic; but I do not believe he is either a lawyer or a logician.

Mr. BLAINE. According to the Virginia standard, no!

Mr. TUCKER. The gentleman says he thanks God that he was not brought up in the school of State rights, as I was. We were certainly brought up in very different schools. The differences between us in our views of the Federal Constitution are very wide; but, sir, I do not propose to go into that matter now. I am not to be betrayed into a discussion of that sort. There are gentlemen in this House, some gentlemen on the other side of the House, who seem to think that whenever I rise upon this floor it is for the purpose of discussing State rights, whether I propose to discuss State rights or not, because that is one of the great bugaboos which is to go along with the "bloody shirt" in the great contest which is approaching. [Great applause.] I suppose that gentlemen bring that question up on all occasions that they may flaunt it in the face of the multitude and secure a vote for Mr. Blank at one end of the Capitol or for Mr. M. at the other end of the Capitol. [Laughter and applause.] The "bloody shirt" is freely used at one end of the Capitol, and here, at this end, is the bugaboo of State rights. [Great laughter and applause.] As for the "great unknown," I do not know where he stands; and I believe, from an anecdote that I have seen in the papers, that the gentleman from Maine does not know who he is, nor where he stands. [Laughter and applause.]

Now the gentleman has imputed to me an intention of which I am in no wise guilty. And if the gentleman had been in the House a week ago, when I made a speech upon this question before, he would have been satisfied that he did me injustice in saying that I denied the power of any court to revise the action of this House, no matter what it might do. On the contrary, as he will see in my printed speech, I assumed this position upon which I stand, as sanctioned by the English decisions; that while the court may inquire into the extent of the privileges of this House, they cannot inquire into and are precluded from any examination of the mode in which those privileges have been exercised. That is the distinction I have drawn, sustained by English and American precedents.

I do not know but I have consumed more time than I ought. I will

now conclude by asking the House to adopt the amendment which I have offered.

Mr. HURD. I now move the previous question upon the preamble and resolution reported from the Committee on the Judiciary, with the amendments pending thereto.

The previous question was seconded and the main question was ordered.

The SPEAKER *pro tempore*. The gentleman from Ohio [Mr. HURD] is entitled under the rule to one hour to close the debate.

Mr. HURD. I will yield fifteen minutes of my time to the gentleman from New York, [Mr. LORD.]

Mr. LORD resumed and concluded his remarks begun this morning. They are as follows:

Mr. LORD. I apprehend, Mr. Speaker, that the real question in this case is not whether the House shall reverse the solemn judgment which it has already entered in the premises; the question is not whether that judgment was intrinsically right or wrong. The simple question before this House is whether having entered this judgment it is compelled to surrender the person of Mr. Hallet Kilbourn, whom it has adjudged to be in contempt. As has already been said, this is a very important question; it is a question which comes to this, whether this House may be compelled, while Mr. Hallet Kilbourn or other witness is being examined before it or when the witness is at the door of this House about entering to be examined, to surrender his person and give up the right of investigation.

Before examining this question it is proper perhaps to look at the surroundings of the case which has called from members of this House such bitter denunciation, and even the threat by the gentleman from Wisconsin [Mr. LYNDE] that those who vote to sustain the Committee on the Judiciary shall be retired from the public service. Now, Mr. Speaker and members of this House, has this House rendered any arbitrary judgment? Has it said that Mr. Kilbourn shall be confined ten days, or six months, or ten years? Has it said anything that would take it from the power of Mr. Kilbourn to release himself? Not in the least. He can at any moment be released from this imprisonment by coming forward and stating just the truth in regard to the transactions concerning which he was being examined.

There is no question whatever—I repeat, no question whatever but that this House has jurisdiction over the subject-matter concerning which Mr. Kilbourn was being examined, nor that this House has jurisdiction over his person. He can at any moment unlock the door of his prison; he can at any time, by coming into this House and obeying its mandate and telling the truth in regard to this matter, be released from the confinement of which he complains.

Now, what reason does he give for not doing so? He says that he has nothing but what he is willing to tell, nothing but what he could tell without injury to himself or any one. He says that he has nothing to conceal from this House; that after having told the whole of what he knows, having revealed every personal transaction, or what he calls personal, to which he was called upon to testify, there would be nothing to implicate his character or that of any other person whomsoever. This is his position. Then why does he not state the facts? He says that he cannot do it, because to do so would be to violate a principle. This Mr. Kilbourn therefore seeks to make himself a martyr for a principle. Now what principle is involved? What is there in one's personal transactions, if fairly conducted, in the books and accounts of a person, if fairly conducted, that would do him an injury? And when this House determines, in conjunction with the report of the committee, that such testimony is material, why should Mr. Kilbourn withhold it?

Who is this Mr. Kilbourn who thus refuses to testify? What guarantee has this House in his past history that this point which he makes is sincerely made, is one of principle? It has been developed to this House that since he has been in confinement he has availed himself of a privilege given to him to take of the moneys of the people of the United States at the rate of over $7,000 per annum for purposes of eating and drinking. Now when we are asked to look at this martyr sustaining a principle and to extend to him the belief that he is acting from principle, we cannot but look at the fact that he has thus abused the privilege which it seems in some way was conferred upon him.

Now the question is not before the House—and I beg the House to consider this point—the question is not before the House whether we will make a return to the court which has issued this writ of *habeas corpus*. No one of the Judiciary Committee, no one here, denies that a return should be made. It is proposed to make a most respectful return stating the fact that this House, in the exercise of its jurisdiction in regard to witnesses, has found this witness contumacious and has condemned him as guilty of a contempt and ordered him into the custody of the Sergeant-at-Arms until he shall see fit to answer the questions proposed to him.

The question as to the body is a technical one. My learned friend from Wisconsin [Mr. LYNDE] asserted that the moment this prisoner was taken before the court and the court ascertained and determined that he was held here by virtue of the process and judgment of this House he would be immediately remanded to the control of the House. How do we know that, Mr. Speaker? If that be true, then, certainly the question now being considered is one of no very great importance; for, if it be the duty of that court, as seems to be conceded here, to remand the prisoner the moment it ascertains that he is held by authority of this House, then what is the urgent necessity of taking him before that tribunal? The objection to taking him there is this: that the moment he is there, as is found from all the authorities and as is conceded by every member of this House who has spoken on the subject, so far as I recollect—that the moment he is taken there he is in the custody of the court and he is outside of the custody of the House of Representatives.

Now we are asked by what authority we refuse to produce the person? I say by authority of the last House of Representatives. That House, as is conceded here, refused to surrender the person of a contumacious witness who was ordered into imprisonment by that House. In the first place they did it unconditionally; they said, "We will not give up the prisoner." In the next place they said—what? They said, "We will let the prisoner be taken before the court; but we command the Sergeant-at-Arms not to surrender the person of the prisoner." Now I say that order in all respects affirms and sustains the report of the Judiciary Committee in the present case. I say that, so long as the Sergeant-at-Arms was directed to keep the custody of the prisoner, so long the prisoner was in the custody of the House. Therefore the action of the last House is an authority completely sustaining this House in the position which it has taken.

Mr. MILLIKEN. Will the gentleman please state the difference between the action of the House at the last session and that proposed in the minority report in this particular case? Is not the resolution reported by the minority here identically the same as the resolution of the House in the Irwin case of last winter?

Mr. LORD. I understand that the minority report in this case simply directs that the body of the prisoner be taken before the court; I do not understand that the minority in this case recommend that the Sergeant-at-Arms retain the possession of the prisoner. I understand that in the last House, after full and mature deliberation, the Sergeant-at-Arms was solemnly directed to keep the control of the body of that prisoner. Now in principle what is the difference between that case and this?

Mr. GARFIELD. Will the gentleman allow me one moment to set him right in one respect? I am sure he wishes to be correct.

Mr. LORD. Yes, sir.

Mr. GARFIELD. The gentleman states correctly the first action of the House in the Irwin case. The committee reported against delivering the body, a minority of the committee being in favor of delivering it; and finally, in its first action, the House reached a sort of mixed conclusion: that the Sergeant-at-Arms should take the body before the court, but not lose custody of it. That return was made to the court, and, as several of us here in the House had said we expected the court would do, it answered very properly, "We can accept no such delivery as that; if the prisoner is not delivered into the custody of this court, the court does not consider a proper return made." Whereupon the committee reported the question back to the House; and on the 15th of January, after a long debate, this resolution was adopted:

> That the Sergeant-at-Arms be, and he is hereby, ordered to make a careful return to the writ of *habeas corpus* in the case of Richard B. Irwin that the prisoner is duly held by the authority of the House to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Irwin before the court when making such return, as required by law.

So that finally, on a vote of 107 to 64, we ordered the Sergeant-at Arms to make return in accordance with law; and the body was delivered. It thus appears that the action which my friend refers to was overruled on a subsequent day upon a vote of the House by yeas and nays; and, as I understand, the resolution of the gentleman from Wisconsin, [Mr. LYNDE,] representing the minority of the committee in this case, is identical in terms with the resolution which the House finally passed in the Irwin case.

Mr. LORD. Do you mean the last resolution?

Mr. GARFIELD. Yes, sir; the last resolution of the House in the Irwin case; the resolution I have just read. That was the resolution suggested by Mr. Beck, of Kentucky, and which received the votes of many democrats.

Mr. LORD. I was misinformed, then, by the concessions of Saturday as to the final resolution in the Irwin case. It seems that the last House determined in the first place that it would not deliver the person of that witness. In the second place it determined that the person of the witness might be taken before the court, but that the Sergeant-at-Arms be directed to keep possession of the witness. Finally, however, it seems that the House, knowing possibly what the court in that respect would do, yielded the point, and permitted the prisoner to be taken unconditionally before the court. But, Mr. Speaker, I propose now to show very briefly that the action of the last House in the first instance was correct; that unless this be so we have no control whatever over investigations. It has been suggested that this House adopt the second resolution of the last Congress. I propose to show that this resolution was entirely wrong, (as was conceded by referring me to the third and final resolution of that House,) for sending the prisoner before the court in the custody of the Sergeant-at-Arms and commanding him to keep possession of the person would be keeping him within the possession of the House and worse than to refuse to send him at all; for the reason that, in the case of the second resolution being adopted and carried out, there would be danger of collision of authority in the presence of the court. Assuming, as was assumed here the other day, without contradiction, that the action of the last House as expressed in the second resolu-

tion was its ultimate action; assuming that the court had then said that the witness was entitled to his liberty; assuming that the Sergeant-at-Arms had then said, "Notwithstanding this court says the witness is entitled to his liberty, I am instructed by the House of Representatives not to surrender possession of him;" what then? There would be a direct conflict in the very presence of the court.

But, Mr. Speaker, I come now to the simple proposition that this House has the power to detain this witness. I come to the proposition that it is the duty of this House to detain this witness, because if the writ of *habeas corpus* against the final judgment of this House can take the prisoner it may take him while he is in the act of testifying at our bar; it may meet him at the door. Arming the officers of the courts of this District with sufficient writs of *habeas corpus* they can utterly and forever break up every investigation of this House.

Mr. Speaker, in the judgment of the law this man, Hallet Kilbourn, is as much under the control of this House this moment as he was when he stood at its bar refusing to testify. In fact, in legal intendment, as all lawyers who are present will concede, he is in the actual custody of this House under its final judgment, as a contumacious witness, and will be until he testifies or until the House adjourns.

But, Mr. Speaker, let me call the attention of the House to two or three authorities on this point. In the first place the question has been decided in the case of Kearney, 7 Wheaton, 44, by the Supreme Court of the United States; and what higher authority can the supreme court of this District require? In that case it was decided, after due and mature consideration, as follows:

> The sole adjudication of contempt and the punishment thereof belong exclusively and without interfering to each respective court.
> Infinite confusion and disorder would follow if courts could, by writs of *habeas corpus*, examine and determine the contempts of others. * * * *If granted, the court could not inquire into the sufficiency of the cause of commitment.*

Now I apprehend there is no gentleman on the other side, no gentleman however denunciatory of the action of this House, but will admit it has equal authority with a district court of the District of Columbia, to say the least; that this House, in the investigation of matters sent to it and before it, has at least the power to punish a contumacious witness for contempt as much as has the district court of the District of Columbia to issue a writ of *habeas corpus* or to punish for contempt.

Here is the authority of the Supreme Court of the United States saying in such cases one judicature cannot interfere with the jurisdiction of another because it would create infinite confusion, and because, if the writ be granted, the court could not inquire into the sufficiency of the cause.

Now let me call the attention of Congress to another decision made in my own State and precisely like the case before the Congress. In the State of New York the statute is that in all cases the body of the person detained shall be brought before the tribunal. A writ was issued by Judge Bacon, of the supreme court, for the purpose of bringing before that court a young man alleged to be a deserter. Return was made by the officer stating that he held him by authority of the United States, and finally stating that he did not produce the body in court because he did not regard it his duty to do so, notwithstanding the writ. Judge Bacon, in the first place, stated there seemed to be an anomaly in excusing the production of the body, inasmuch as the writ demanded it, and inasmuch as the statute also required the production of the body; but when he came to read the return he took precisely the course which we may assume the chief justice of the supreme court of the District of Columbia will take when he reads the return by this House. And it must be borne in mind in all this discussion we propose to make a return, we propose to treat the court with entire respect; but we propose to make the return that, inasmuch as we hold this man, Hallet Kilbourn, under definite and final judgment, he cannot be wrested from our possession by the writ of *habeas corpus*. When the learned judge reads our return, if he had supposed he had some power to inquire into the facts, yet if he takes it as true, as he undoubtedly will, when its very truth can be ascertained by the paper upon which he must act, he will say what Judge Bacon says *In re* Hapson, 40 Barbour, pages 34, 36, 40. This is the language of the court:

> Our statute in relation to writs of *habeas corpus* * * * provides in broad terms that every person * * * restrained of his liberty, * * * under any pretense whatever, except in certain enumerated cases, may prosecute the writ. By another section it is made the duty of the person against whom the writ is issued to bring the body of the person in his custody * * * before the officer issuing it. * * * The production of the person is also an explicit command of the writ, and as the elementary writers generally state, it constitutes an essential element of the proceeding. * * * But unless the case is entertained and the cause of the detention is to be investigated, it is very obvious that the presence of the alleged prisoner is of no sort of consequence. * * * Even if he were personally present and before the court, it is manifest that his corporal presence and actual production is of no consequence whatever.

Here, Mr. Speaker and gentlemen of this House, is the solemn adjudication of one of the ablest judges of the State of New York, by which he holds and affirms, where the return shows that the court issuing the writ of *habeas corpus* has no power over the question, where the return shows another tribunal has the proper custody and control of the person whose body is ordered to be produced, then the production of his body is of no consequence whatever; and in this case the learned judge held that his body need not be produced; and you will see at once it was a very sensible conclusion.

Every statute is to be read according to its intent. A court has no more right to demand this prisoner under a writ of *habeas corpus* when he is held by the ultimate judgment of this House for contempt than to require a person to be brought from the pest-house who is stricken with the small-pox or malignant fever. The law is to be interpreted reasonably, according to the necessities and requirements of the case. This principle, correctly applied, will never essentially change or repeal a law, but comes within the familiar rule—

> A thing within the intent of the statute is a part of the statute, though not within its letter; and a thing without the letter is within the statute, if within its intention.

So long as it is true—and the learned gentleman who led on the other side, the gentleman from Wisconsin, [Mr. LYNDE,] conceded it to be true—that the supreme court of the District of Columbia could only remand this prisoner the moment he was taken before it and the return made that he was held for the contempt referred to, it is but an idle form and ceremony to take his body there, a form and ceremony in which I have said I would acquiesce were it not for the fact that if we obey the writ in this regard the House of Representatives at once surrenders the person of the prisoner.

When we are asked for authorities we find them in abundance. I need not refer again to the authorities cited on Saturday from the Supreme Court of the United States and in the courts of England. I bring an authority from my own State directly in point, where the statute expressly, as this statute does, requires the body to be taken before the court; and yet the court there held, after mature deliberation, that when the return made—as our return will do—brought before the court the fact that if the person of the prisoner were in court he would be at once remanded, then it follows that the person of the prisoner need not be taken into court at all.

Mr. LAWRENCE. Will the gentleman give the name of the New York case to which he refers?

Mr. LORD. It is *In re* Hopson, 40 Barbour.

It is now too late to question the power of this House to investigate certain questions that are brought before it. It is true that this power is not expressly conferred by the Constitution; but in fact it is conferred by the Constitution in the broadest possible manner. The first section of the Constitution of the United States creates the House of Representatives. The second section provides how the House of Representatives shall be constituted. This House and the Senate, therefore, have the dignified position of being the first named in the Constitution. The first creative act of the Constitution was the creation of the United States Senate and the creation of the House of Representatives; and there is no limitation upon the power of the House as exercised by the House of Commons except that its jurisdiction is limited.

Now I wish to call the attention of the House to this point: It seems to be claimed on the part of some that because the Government of the United States, because the Congress of the United States, because the House of Representatives is limited in its jurisdiction to certain subject-matters, it is therefore limited in regard to this question. This is not so. Conceding the fact to be that this House has the power to examine a witness, then it has the power to punish that witness for contempt in case he refuses to answer. The power, then, of this House as to examining and punishing a contumacious witness is just as broad as that of the House of Commons of England. Whatever may be done by any tribunal on the face of the earth in this regard can be done by this House.

[Without concluding, Mr. LORD gave way for the House to take action in regard to the impeachment trial. He subsequently concluded, as follows:]

Mr. LORD. In concluding the remarks that I began this morning I shall omit at this late hour very much I had intended to say, and shall endeavor to confine myself within less time than the fifteen minutes allowed me by the courtesy of the gentleman from Ohio, [Mr. HURD.]

The strange position taken by my friend from Iowa [Mr. MCCRARY] leads me to concentrate my remarks mainly upon a single proposition. If I understood that gentleman aright, he claimed that it is within the power of any court of the United States, or any court of the District of Columbia having power to issue the writ of *habeas corpus*, to inquire into a judgment of this House. This House, equal in its dignity and power to the House of Commons of England, having the constitutional power to investigate villainies committed within this District or within the United States, having solemnly adjudicated that the witness brought before us was bound to answer the questions proposed to him, can be arrested in that investigation, can have its judgment reviewed and reversed by any inferior tribunal in the District of Columbia. Up to the time that this sentiment was uttered by the gentleman from Iowa, I had supposed that there was a universal concession on the part of the House that its judgments could not be thus reviewed. In fact in all the arguments made, commencing with the argument of the gentleman from Wisconsin [Mr. LYNDE] and coming down through, from State to State, until we reach the argument of the gentleman from Iowa, [Mr. MCCRARY,] no one suggested or pretended that any court could review the judgment of this House.

A great deal has been said about the invasion of the personal rights of Mr. Kilbourn. I ask the attention of the House to this point; the questions put to Mr. Kilbourn had nothing whatever to do with his personal rights. I have not time to read in full the resolutions passed by the House upon the subject of this investigation. What was this

committee charged to do? It was charged with the duty of inquiring into the real-estate pool of the District of Columbia, to ascertain who were its members, to ascertain what had been done in regard to it, because it was believed that a large portion of the property of Jay Cooke & Co. had been covered up in that very pool.

What was the question which the witness refused to answer. He answers very many. He claims that the pool is represented by five individuals. It is important that the House should know who they were. He claims that that pool was represented by five individuals, and therefore any sum which had been made in that pool must be divided by the number 5. So that, in truth and fact, if this pool had been represented only by this one man and Jay Cooke & Co., then the divisor would be 2 instead of 5, and the sum due the United States would be very much larger.

I ask the attention of the House while I refer to these questions in the identical language in which they were put. We have heard very much about this being an invasion of personal rights. I am forced into a discussion that does not belong to this House by the attitude taken by the gentleman from Iowa, [Mr. MCCRARY;] that is, in regard to the questions propounded to this witness. I read them to the House to show that not one solitary question referred to his personal rights; every question referred directly to this pool and the transactions of the pool.

Every lawyer in this House is familiar with the rule that, when you have an unwilling witness in court, it may direct that witness to be examined according to the rules of a cross-examination, and they have often heard in court learned judges say that although they could not see precisely the purport of the questions, although they could not see precisely to what the questions would lead, yet they would allow them, because they had confidence in the examining counsel. But, Mr. Speaker and members of the House, no such policy was needed here, for the questions propounded to the witness in this case were proper under any rule of proceeding, as will be seen when we reflect upon what was the subject-matter of the inquiry before the committee. What were those questions, as propounded by the gentleman from Indiana, [Mr. NEW?]

Question. How many members of the pool were there before you became a member? I believe you have in fact answered.
Answer. Five gentlemen besides Jay Cooke & Co. put in $5,000 apiece.
Q. Will you state where each of these members reside?
A. I do not know that I could do that. Mr. Chairman, if you will indulge me, I respectfully decline to give any testimony as it relates to these individuals.

Now, here was the question in the mind of the committee: should the divisor be 2 or 5? Should $10,000 or $30,000 go to the United States? And the most proper question in the world was put to the witness by this learned committee. He was asked to name those persons; he was asked to state where they resided, for the very purpose of ascertaining whether he had told the truth or not. Yet on that point, knowing he was going to be reached and compelled to divulge the truth, which he did not want to tell, (as we have the right to assume,) he avails himself of what he claims to be a privilege, and says: "I will not answer." He did not pretend then that this was a mere personal matter. He had not then made up his mind to be a martyr to a principle; he had not then made up his mind to give the false reason that this was a mere personal transaction, for he was asked not in regard to his person, not in regard to his household, not in regard to his books, but he was asked who were those five persons who composed that pool concerning which this learned committee was inquiring, and he refused to answer.

Why, sir, there is no court or justice of the peace in the whole land so ignorant as not to hold at once that that question was proper, if it referred to the subject-matter before the court. Yet here learned gentlemen ask us to shelter this witness behind the plea of personality, maintaining that we are invading his personal rights. There never was any greater untruth uttered in any tribunal.

Now let me call attention to another question put by this committee:

Q. For the present you decline to state, even if you were certain as to the locality, where they do reside?
A. Yes, sir; I respectfully decline to state anything in relation to individuals who did business with us except upon consultation with my counsel.
Q. Will you please state their names?
A. That I beg to include in the same answer.

Then he is asked to produce certain books. What books? Not the personal books of Hallet Kilbourn; there never was a greate falsehood uttered in a court of justice. The books called for are or were the books of this very pool. Although Hallet Kilbourn claimed to be its trustee and the books were kept in his name, cannot we look behind that shallow device? They were in no sense books of Hallet Kilbourn; they were books of this "pool;" books which this man had the power to produce; books for which this committee had issued this *subpœna duces tecum*. Yet the witness comes here with this plea for sympathy because imprisoned for refusing to tell the committee who composed that "pool." We know that Jay Cooke composed one part of it. When asked to give the other names the witness refused. When asked to bring forward the books he refused. He defies the power of this House, and says now that he is suffering for a principle.

I tell you, Mr. Speaker, notwithstanding the warning we had the other day from the learned gentleman from Wisconsin that those who dared to vote for this resolution would be left at home—not caring for that threat—I say in behalf of the people of the United States that almost to a unit they will see behind this shallow pretense; they will see that this man Kilbourn has secrets which he seeks to cover up. When they read of his grand array of distinguished counsel—the most distinguished and expensive in the United States—they will see that Hallet Kilbourn does not stand alone, and that behind him is a power which is "the power behind the throne."

Now, Mr. Speaker, are we to have our sympathies appealed to in such a case as this? I concede that I am outside the record; but I follow the gentlemen who spoke against the resolution on Saturday and who have spoken to-day. Are we to have this whole matter blinded and hushed up? Are questions which no lawyer on the face of the earth would declare to be improper to be refused an answer? Are we to have this whole matter closed against us under the plea of sympathy; under the allegation that this man is suffering as a martyr in order to vindicate a principle, in order to vindicate his own personal rights?

Now, Mr. Speaker, for fear that some person may be misled, I want to call attention to chapter 7 of the Revised Statutes. I have heard it suggested by various gentlemen that perhaps the statute was intended to take from this tribunal the power to commit a witness. This has hardly been claimed on the other side; yet I find that on my own side of the House the idea prevails more or less that chapter 7, by which a witness who refuses to answer is subjected to indictment, was intended as a revocation of the powers of this House. What could be more false? That statute was not intended as a sword, but as a shield. It was only intended to aid this House. It was never supposed that it was to be used in order to close the gateway to investigation and the door to the truth. That statute could not abnegate the powers of this House without express enactment; and had there been an express provision in the statute, as was well remarked here the other day, this House, going back to the Constitution, representing within its jurisdiction the whole power of the House of Commons of Great Britain, could not be deprived by any act of the Congress of the United States of a right which is an integral and inherent power under the Constitution, belonging peculiarly to itself to work out the truth through these investigations.

The gentleman from Pennsylvania [Mr. KELLEY] says we must set a limit to our power. Now, Mr. Speaker, I do not know what abuse of this power there has been. I have not been here in Washington to watch these events; yet I supposed I knew what witnesses had proved contumacious and been ordered into custody.

I recollect but two cases where witnesses have been committed, the two cases referred to in this debate, and yet my learned and venerable friend from Pennsylvania, [Mr. KELLEY,] whom I highly respect, stands up in this House and warns it against an abuse of its own power. He does this when the only witnesses who have been confined under the power of the House, so far as I know, or at least so far as has been referred to in this debate from the beginning to the end, were the witnesses Irwin and Kilbourn. I apprehend, when it is remembered that the witness Irwin covered himself all over with perjury, and when it appears from the questions and answers in the examination of this witness, Kilbourn, that he is attempting to cover from the view of this House thousands of dollars—I say I apprehend it will not be admitted there is any abuse of this power such as to call upon the Congress to commit suicide, such as to call upon the Congress to adopt a rule which, as has been already said and as we must all agree, will close every door of investigation. Then, so far as we are concerned, we might as well close our doors and adjourn and go home.

We are asked what Clay, and Crittenden, and other departed worthies would say to this invasion of the rights of the citizen. I wish those worthies so long entombed were in the House and we had their judgment on this question of "addition, division, and silence." I apprehend the learned Representative from Pennsylvania would not gain any comfort from them.

[Here the hammer fell.]

Mr. HURD. I yield now to the gentleman from Kentucky.

Mr. JONES, of Kentucky. Mr. Speaker, it is not an agreeable task for me to resist the report of a committee of this House, especially when that committee is composed of a majority of my political associates, and more especially when it is supported by eminent lawyers. But, sir, my duty is imposed by the Constitution of the United States, which, as a representative of the people, I have sworn to support, and I must support it according to my honest conviction of its import and meaning. That Constitution is the sunlight to my path. When I heard the resolution under discussion read to the House I must confess, sir, I felt somewhat startled and stunned. I paused and said to myself, "What, is it proposed to disobey the writ of *habeas corpus;* to suspend it in time of peace, profound peace, and simply to defend the House of Representatives in the execution of a rule, in the imprisonment of a witness for contempt?" Truly, sir, that conspicuous clause in our Constitution, that immortal command, never recurred to my mind with so much directness and force. I immediately turned to my Manual and read:

The privilege of the writ of *habeas corpus shall* not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

I read it again, and lingered upon it with both love and awe—love and gratitude to our ancestors, the "immortal framers," and awe and fear lest at any time I might be persuaded to disobey and ignore it.

My thoughts involuntarily went back to the dark days of the Republic, when the bloody hand of war was outstretched over the land, when hundreds and thousands of our fellow-citizens and myself were snatched away from home and ruthlessly herded together in the dungeons and prison-pens of the country without even the shadow of just charge or complaint. Too many faces arose to my mind's eye of the young and the old, suffering for long weary days, weeks, and months, some in lingering sickness, some in the agonies of death, and some after death—all innocent as the unborn babe of any crime or real disloyalty to their country. Even then, when there was perhaps some excuse for withholding the writ, *we* thought "the public safety" did not require it, and we cried aloud for *habeas corpus*. O! for the great writ of liberty then, that it might come, unbar the gates, and set the prisoner free. O! for one ray of light from judicial power. O! that the cause of this bondage could be inquired into. O! where is the Constitution of our fathers, the freedom of speech or of the press, or personal liberty? I ask my fellow-democrats on this floor what was our shibboleth then, our all-demanding appeal for the personal liberty of the citizen? *Habeas corpus.*

Mr. Speaker, I could not support this resolution if I would, and I would not if I could. I must be pardoned, sir, for the feeling I display. The proposition touches me deeply. I here declare that in my place as a Representative of the people, or in whatever other capacity I may be called upon to act, I will never ignore or deny to the citizen this great heir-loom of English and American liberty. No political ties, no party zeal, no expected success, shall induce me to lose sight of it for a moment. The living and the dead speak to me and command me to respect it. I am sworn to obey it, and when I fail in that duty may this right arm fall paralyzed by my body.

Now, sir, I beg leave to say that with this contumacious witness, Hallet Kilbourn, I have not the slightest sympathy. I know not the man; never saw him except when he stood at that bar. I believe he is in contempt of the House and was justly imprisoned for a violation of one of its rules. I have no respect for and have never been connected with any rings or like associations for any purpose whatever; and if there are men in the world who stand aloof from pools or rings for speculative purposes or otherwise I think I am one of them. I am even suspicious of my own personal friends who have been said to be connected with them. I have ardently expressed myself in favor of all these investigations into our governmental affairs, that they may be conducted with the most severe scrutiny, and have proclaimed that if democrats be found in fraud or peculation upon the Government, though they may have stood high in popular favor and in my personal esteem, let them go down in the common wreck. I am in favor of the same measure to our political friends as to our political foes. Let us never be amenable to the divine injunction:

> Thou hypocrite, first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye.

It is only by acting impartially and justly with all and to all that we shall receive the commendations of a great people, and, what is still more precious, the approval of our own conscience.

I have been quite amazed, sir, at the line of argument pursued by the gentlemen who sustain the report of the committee. They seem to have exercised all their skill and ingenuity to uphold what to my mind seems an illegal and unwarrantable position. I deny the premises from which they argue; they are false, and, as is always the case, arguments drawn from false premises lead to false conclusions. We often fail through the intricacies and mazes of the law and legal decisions as presented and applied by skillful advocates to reach justice and truth. The law to some is but an art, while to others it is a science. Indeed it is but reason, the common reason of mankind, of the highest and most perfect order. Cicero said, "*Lex est summa ratio.*" And Lord Coke perhaps better expressed it "*Lex est perfectio rationis.*" Our Constitution speaks to the ordinary understanding and is not difficult of comprehension, more especially in its isolated mandatory text. The gentlemen who have advocated the majority report of the committee seem to regard the Parliament of Great Britain and the Congress of the United States to a great extent as like systems and clothed with similar powers.

Now, sir, for the purpose of this argument, as to the question under discussion, I deny that there is any analogy between them. The one is unlimited and supreme, the other is limited and the creature of organic law. The one is in its origin a monarchical, aristocratic system; the other a republican system, the emanation of popular sovereignty. The British Parliament is to-day mainly what it was when organized nearly seven hundred years ago in the reign of King John. It is but "the deep-trod foot-marks of ancient customs." The king or queen and the estates of the realm, the lords spiritual, the lords temporal, and the Commons constitute the Parliament. The lords spiritual and the lords temporal were originally appointed by the Crown, and so all hereditary titles of honor. The peers are ennobled of blood, and their dignities can only be lost by attainder. The bishops are only lords of Parliament. It is true the Crown and the House of Lords and the Commons correspond in a degree with our Executive and Senate and House of Representatives, but they all act under different obligations and responsibilities. The king or queen swears to govern the kingdom and the dominions thereto belonging according to the statutes of Parliament agreed on, and the laws and customs of the same. The members of the two houses take the oaths of allegiance, supremacy, and abjuration. It was proclaimed in the days of Elizabeth that "the most and absolute power of the realm of England consisteth in the Parliament." Lord Coke said:

> The power of Parliament is so transcendant and absolute, that it cannot be confined either for causes or persons within any bounds.

To-day there is no limit to its power and jurisdiction; it is not controlled in its discretion; and when it errs, its errors can only be corrected by itself. It is indeed a law unto itself, and that law is the supreme power of the land. The most recent and approved author (Mr. May) on parliamentary law says:

> The legislative authority of Parliament extends over the United Kingdom and all its colonies and foreign possessions; and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey or their power to resist. Unlike the legislatures of many other countries, it is bound by no fundamental charter or constitution, but has itself the sole constitutional right of establishing and altering the laws and government of the empire.

It has, unlike any part of our republican system, an inherent judicature, and hence its time-honored title, the "high court of Parliament."

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers, and another in claims of peerage and offices of honor under references from the Crown; another for controverted elections of the representative peers of Scotland, and of all questions touching the rotation or election of lords spiritual or temporal of Ireland. But in addition to these special cases they have a general judicature as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient "*Consilium regis*," which, assisted by the judges and with the assent of the king, administered justice in the early periods of English law. Their claim to an appellate jurisdiction over causes in equity, on petition to themselves without reference from the Crown, has been exercised since the reign of Charles I; and, in spite of the resistance of the Commons in 1675, they have since been left in undisputed possession of it. They have at the present time a jurisdiction over causes brought on writs of error from the courts of law, originally derived from the Crown and confirmed by statute, and to hear appeals from courts of equity on petition.

I have thus dwelt, Mr. Speaker, upon the character and jurisdiction of Parliament to show that, in its origin, authority, and scope, it is almost totally dissimilar to the Congress of the United States. It is true that we take what we term our parliamentary law or rules of government in each House in the main from the English system; but we do not possess judicial power, and, unlike Parliament, are in no sense a court, except indeed in the Senate, when it sits as a court of impeachment, as specially provided in the Constitution. Hence it cannot be maintained that because Parliament issues judicial process, and the House of Commons alone may do so and is held as a court, our House of Representatives may exercise like powers or is in any sense a court.

Now, sir, what, in brief, is our system of government? We are a federal or confederate republic, based upon the sovereignty of the people, the Chief Executive elected by the people, you and I and all of us elected by the people, the Senate by the people one degree removed. We are the creatures of an organic law, a constitution which we are all sworn to support, and in our duties here we cannot, if we keep our oaths, transcend its limits or authority. The President of the United States, unlike the monarch of England, is the servant and elect of the people. He swears to "preserve, protect, and defend the Constitution of the United States." That Constitution creates our system of government with its three great distinct branches and defines their powers. It is our higher and highest law. We, as a House of Representatives, are its creature under express affirmative and prohibitive mandates.

Now, sir, let us examine this case closely. The House has committed to prison a witness for refusing to answer questions and to expose the books of a corporation or partnership of which he is an officer or member. I think the House did right, as is admitted, according to custom, and indeed established by statute, in exercising this legislative and quasi-judicial function. But, sir, it may not be amiss, in order to see our way clearly, to consider whether the House possesses the constitutional power to imprison a person for any cause whatever. We find no express authority for it in the Constitution. The only provision which seems to indicate such a power is in the second paragraph of section 5, which says:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Now, sir, from part of that clause alone is to be drawn the only power which this House has to commit a witness for contempt, namely, the words "each House may determine the rules of its proceedings." The balance of the clause refers only to the members of the House. And might it not indeed be contended that the whole clause refers only to members and that the operation of the rules was not to extend beyond them, except indeed in protecting the House from intrusions and disorderly conduct by the public? The question may not be inappropriately asked here, can this House in the exercise of its rules or of any power in the Constitution imprison one of its own members? And if not, can it imprison any other person? I was interested in the argument of my friend from Ohio, [Mr. HURD.] It was ingenious and able. The law and the decisions he quoted were good, but I must be

allowed to say they did not apply to the case at bar. The chief case he instanced, that of Anderson *vs.* Dunn, reported in 6 Wheaton, was simply on writ of error on an action of trespass against the Sergeant-at-Arms of the House of Representatives for an assault and battery and false imprisonment, and the question was whether imprisonment by the House for a breach of its privilege and contempt of its dignity and authority was a legal justification and bar to the action; or, in other words, whether the House had the power to imprison at all. There was no writ of *habeas corpus* in the case. Mr. Justice Johnson, who delivered the opinion, said:

The present question is, What is the extent of the punishing power which the deliberative assemblies of the Union may assume and exercise on the principle of self-preservation?

The counsel for the plaintiff contended that the House had no authority to issue the warrant; that the warrant was illegal on the face of it, and that in either case it was no justification to the officer who executed it; that the power of issuing warrants was judicial; that the Constitution provided that "no warrant shall issue but on probable cause, supported by oath or affirmation;" that at common law the power to punish for contempt was incident to courts, but Congress and House of Representatives being terms unknown to the common law could derive no claims through it; that courts only could enforce the laws, they were therefore clothed with authority to compel obedience; whereas the Legislature is merely deliberative.

The Attorney-General held that the House of Representatives exercised the power to punish for contempt as incidental to its legislative or judicial capacity, and that the necessity of self-defense was as incidental to legislative as to judicial authority; that it was sufficient protection to the officer that the House had jurisdiction to punish contempts and that it had adjudged the plaintiff guilty of contempt; that the doctrine was established by the Supreme Court that the grant of the powers expressly given to Congress in the Constitution involved all the incidental powers necessary and proper to carry them into effect.

Mr. Justice Johnson, in delivering the opinion, said:

It is certainly true that there is no power given by the Constitution to either House to punish for contempts except when committed by their own members, nor does the judicial or criminal power given to the United States in any part expressly extend to the infliction of punishment for contempt of either House or of any co-ordinate branch of the Government. Shall we therefore decide that no such power exists? It is true that such a power, if it exists, must be derived from implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers.

He, however, affirmed the judgment of the court below, on the ground that the House of Representatives and all legislative assemblies possessed an incidental power, to protect themselves in the maintenance of their own dignity, to punish for contempt; but this was a power not substantive and independent, but auxiliary and subordinate; and that was "the least possible power to the end proposed," which was the power of imprisonment. The learned justice said in the same opinion, which I quote in answer to the ideas advanced in this discussion, of analogy between the Congress of the United States and the Parliament of Great Britain:

But the American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain.

Now, sir, it will be observed that the question under discussion is not touched by this opinion and indeed was not in the case of Henderson *vs.* Dunn at all. The question in that case I repeat was whether the House had power to commit for contempt. *That* is admitted, and I have adverted to the case with so much particularity to show that such only was its extent.

Who can doubt for a moment, after reading the decision of that able jurist, that he would have held that this House could retain a prisoner against a writ of *habeas corpus*? If so, he would have placed himself by his own argument in the ridiculous attitude of maintaining that the House, in the exercise of merely an incidental, implied, and subordinate power could vitiate and annul an express power and prohibitive mandate of the Constitution. He would have maintained that a legislative and quasi-judicial incidental function was superior to the highest and most sacred function appointed by the Constitution to the judiciary branch of the Government of the United States.

It must be perceived, sir, that the entire argument of the gentleman from Ohio [Mr. HURD] and of his colleague, [Mr. LAWRENCE,] and indeed of all who have supported the majority report of the committee, is based, first, on the idea of similarity of authority between the Congress of the United States and the Parliament of Great Britain; and, secondly, that this House has equal power with a court of justice, and, indeed, is a court. All their citations apply to courts. I have shown that the two houses of Parliament are courts, but deny that this House of Representatives is a court, or can exercise, in legal acceptation, judicial functions. It cannot issue judicial process or "due process of law," as meant by the Constitution. Judicial process means something to be done by a judge—*judex* or *judices*. We have none here.

I will repeat the quotation from Blackstone, which my friend [Mr. HURD] made, and upon that hang all the others he made:

All *courts*, by which I mean to include the two houses of Parliament and the courts of Westminister Hall, can have no control in matters of contempt. The sole adjudication of contempt and the punishment thereof belong exclusively and without interfering to each respective *court*. Infinite confusion and disorder would follow if courts could by writs of *habeas corpus* examine and determine the contempt of others.

That, sir, is, of course, good law and I admit every word of it, and so the citation from his own learned father, Hurd on Habeas Corpus:

It is a rule essential to the administration of justice that when a court is vested with jurisdiction over the subject-matter upon which it assumes to act and regularly obtains jurisdiction of the person, it becomes its right and duty to determine every question which may arise in the cause without interference from any tribunal.

This is all true, sir, but applies exclusively to courts. I make no question of the power of a court of superior jurisdiction to hold a prisoner against a writ of *habeas corpus* issued by an inferior court, nor of the power of any court of jurisdiction in the case to hold a prisoner in execution of its judgment against the interference of any other court; but, sir, can any power, or court if you please, in this land—for the Senate may be a court of impeachment—which has not the authority to issue a writ of *habeas corpus*, hold a prisoner against a court that has such authority? Suppose, sir, when the Senate of the United States—a body that never dies—was sitting as a court of impeachment in the trial of President Johnson, they had committed General Sherman, who was a witness, for refusing to answer a question, as they had a right to do, would they have refused to obey a writ of *habeas corpus* issued by the Supreme Court of the United States, or indeed of any court having the power to issue the writ? The Senate even, sitting as a court as authorized by the Constitution, which this House can never be, would have been bound to obey the constitutional mandate in respect to *habeas corpus*. I contend that this House has no option but to obey the writ, from whatever court it may issue, from the Supreme Court down to the lowest whence it may come.

But, sir, how is this great process regarded even by Parliament? It is guided by no law but its own; it is supreme, and could abolish the writ of *habeas corpus* if it pleased. Yes, sir, it could abolish or ignore Magna Charta itself. The latest and most approved English authority on the subject says:

The *habeas corpus* act is binding upon all persons whatever who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by the houses of Parliament for contempt. There have been cases indeed in which writs of *habeas corpus* have been resisted, as in 1675, when the House of Commons directed the lieutenant of the tower to make no return to any writ of *habeas corpus* relating to persons imprisoned by its order, and in 1704, when similar directions were given to the sergeant-at-arms. But these orders arose from the contests raging between the two houses, the first in regard to the judicature of the Lords and the second concerning the jurisdiction of the Commons in matters of elections; and it has *since* been the *invariable* practice for the sergeant-at-arms and others, by order of the house, to make returns to writs of *habeas corpus*.

In England, however, it is the practice of the courts not to inquire into the causes of the commitment, but to sustain it and remand the prisoner to Parliament, acknowledging its power and supremacy. As in the case of Lord Shaftesbury, who had been committed by the House of Lords for contempt, when brought before the court of King's Bench he was remanded. Lord Chief Justice Rainsford said:

He is in execution of the judgment given by the lords for contempt; and therefore if he should be bailed he would be delivered out of execution. And again, this court has no jurisdiction of the cause, and therefore the form of the return is not considerable.

The House of Commons alone is, in England, considered a court. As Mr. Justice Powys said in another case, The Queen *vs.* Paty:

The House of Commons is a great court, and all things done by them are to be intended to have been *rite actæ*.

In 1751 Mr. Murray was committed to Newgate by the Commons for contempt, and was brought up to the court of King's Bench by a *habeas corpus*. He was refused bail, Wright, justice, saying:

It need not appear to us what the contempt was for; if it did appear, we could not judge thereof; the House of Commons is superior to this court in this particular. This court cannot admit to bail a person committed for a contempt in any other court in Westminster Hall.

In Brass Crosby's case, in 1771, De Grey, chief justice, said:

When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction and their commitment in consequence an execution; and no court can discharge or bail a person that is in execution by the judgment of any other court. And again, courts of justice have no cognizance of the acts of the houses of Parliament, because they belong *ad aliud examen*.

Now, sir, I hope the distinction which I make is clear, that the Parliament, even the Commons alone, is a court, and this House of Representatives is not; but even in Parliament they consider the writ as so important, so sacred to English liberty that in all cases they obey it, although not bound to do so by any superior authority. We, on the contrary, must act by superior authority and by express command. We have no more right to disobey that clause of our Constitution which says, "The privilege of the writ of *habeas corpus* shall not be suspended," &c., than we have to disobey the clause which immediately follows it, namely: "No bill of attainder or *ex post facto* law shall be passed," for who will say that the Congress of the United States can pass a bill of attainder or an *ex post facto* law?

But it is said, sir, that the supreme court of the District of Columbia may not remand the prisoner if taken before it but may admit him to bail or discharge him. I ask, what right have we to suppose that the court will not do its duty in the premises? We must exercise that comity which is due to all courts and which belongs to all

branches of the Government. My judgment is that the court ought to and I have a right to believe will, return the prisoner to the custody of the House, or, in other words, sustain the commitment in respect to the authority of the House in the exercise of this incidental power or usage to maintain its dignity.

But, sir, take the alternative. Admit that the court does not adjudicate as we have a right to suppose it will, but assumes to inquire into the cause of our commitment. May it not be possible that we have erred in judgment? This House is not infallible, nor is any human power. It then becomes us to inquire whether or not we have invaded other great constitutional guarantees to the people.

We have these clauses staring us in the face, and we are sworn to support them:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

And again:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

I admit, sir, that these clauses do not directly apply to the case we are discussing, but in some aspects of it they may do so, and they are worthy of our most serious consideration. Sir, what to us is the right or claim to hold this prisoner according to the *lex et consuetudo parliamenti*, the law and custom of Parliament, as weighed in the balance with these great guarantees of freedom to the citizen?

Habeas corpus is the leading feature of Magna Charta, and has been the great bulwark of English liberty for nearly seven hundred years, since the noble barons extorted it from King John at Runnymede.

No freeman shall be seized or imprisoned but by the judgment of his equals or the law of the land.

It has been held in veneration for centuries, and the laws of England provide a punishment for the judge who dares to refuse the writ; he incurs a forfeiture to the complainant. It may be suspended in time of war, but Blackstone wisely said:

The suspension of it in time of war is the sacrifice of the security of personal liberty for a time the more effectually to secure it in the future.

We can appreciate the wisdom of that utterance now. Sir, this personal privilege to man is even more ancient than Magna Charta. It was recognized in some sense among the Romans, even since Paul, nearly nineteen centuries ago, stood at the judgment-seat declaring he was free-born and a Roman:

I appeal unto Cæsar.
Then Festus, when he had conferred with the council, answered, Hast thou appealed unto Cæsar? unto Cæsar shalt thou go.

Sir, it has been said in this debate that really we had no writ of *habeas corpus* until it was enacted and defined by law; that, although incorporated in the Constitution, it was vague and undetermined; that it required legal enactment to make it of practical effect. Sir, did not the framers of the Constitution understand what it meant? Did they say "The privilege of *a* writ of *habeas corpus* shall not be suspended?" No, sir; they said "The privilege of *the* writ of *habeas corpus* shall not be suspended," &c.

Did not James Madison and Alexander Hamilton and Benjamin Franklin and the other immortal framers of that instrument understand what *habeas corpus* was? Did not the learned and great Jefferson know what it meant when he said in his inaugural address as President of the United States:

Freedom of religion, freedom of the press, and freedom of person under the protection of *the habeas corpus* and trial by juries impartially selected, were among the principles "that form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and the blood of our heroes have been devoted to their attainment!"

The great men of our revolutionary era, and after, understood it and intended it to be understood, as the courts and the great lawyers of England and America held it to be, as it was regulated by the statute of Charles II—

That the person shall make due return of the writ and bring, or cause to be brought, the body of the party so committed or restrained into or before the lord chancellor or the lord keeper of the great seal of England.

The writ was intended to be executed in its literal meaning—"*habeas corpus*," you shall have the body. Without the delivery of the body the execution of the writ would be imperfect and farcical. Let me ask, Mr. Speaker, what sacrifice do we make by obeying this process? It is supposed that the Government had an interest of twenty or twenty-five thousand dollars in this real-estate pool, and if that could be recovered and returned to the Treasury of the United States it would be so much saved to the people. But, sir, do we know that the Government had anything in that pool, or indeed that there was any crime or fraud in the business at all? Was it not a mere suspicion, although perhaps well-founded, by the investigating committee? May it not be that this contumacious witness is an honest man, and has been acting under a mistaken, false pride in his refusal to answer questions? May we not at least give him the benefit of a doubt?

But in any event, Mr. Speaker, regardless of consequences, let us do right; let us bravely and promptly do our duty. Let not the American House of Representatives refuse to execute this great writ so precious to our people, which indeed lies at the foundation of every free government on earth. I would rather, sir, march in solid column with every man in this House, our honorable Speaker at the head, escort this man in all dignity and surrender him at the foot-stool of the judicial power, than hold him a single hour against this process. The people would honor us for it; indeed it would be a glorious sight in the eyes of the nations, and the more humble or mean the individual the more honor to the high representatives of the people. Let us not set the example of disobedience to this almost God-given injunction; if we do, be sure, sir, it will come back to plague us.

It is true, sir, we are the great inquisitorial power of the nation. The people expect us to investigate public affairs, to root out, if possible, all fraud and evil in official places, to expose the wrong-doer, to promote economy and reform in every branch of the Government; but, sir, the very moment in our investigations or acts we come in conflict with the law of our origin, our being, the moment we stand face to face with an interdiction of the Constitution—especially that above all others: the fundamental right of the citizen—that great people would say to us, "Stop! stop!" suddenly as an eclipse of the sun at noonday; "thus far shalt thou go and no farther."

Let us remember how often the obedience to this writ has vindicated the right over the wrong, the innocent over the guilty; how often it has built up the heart of the disconsolate father, and cheered and made glad the stricken mother. Many a poor boy have I myself seen taken from the grasp of the military power of the United States even, and returned to his weeping mother in obedience to this mandate from a mere county court. Shall we not respect it, sir? Shall we not observe the distinction between the judicial and the legislative departments of our Government? What is Hallet Kilbourn and all he knows, every secret in his bosom, in comparison with this great privilege of the American citizen? Better, sir, let ten thousand Kilbourns go—be set at liberty and escape into the distant forests and there perish with the savage and the beast of the wild wood. Yes, sir; better let all impeachments go, all the Belknaps in Christendom untried and unwhipped of justice, than hesitate to respect and obey the *habeas corpus*. It has been the palladium of liberty for ages. It is consecrated in the hearts of our people. It was in principle proclaimed by our fathers in the Declaration of Independence. It is asserted in every bill of rights in our States, and is signally ingrafted in the Federal Constitution. It is a blood-bought inheritance. Under its protection, in the main, though oft through tribulation, we have run a glorious race, and are about to complete a well-rounded century of liberty and law, and I trust a golden era is opening upon us and our children. It is the terror to tyrants, and the last hope of the prisoner. It is the sheet-anchor of freedom wherever on earth the rights of man are recognized. It is the brightest orb in the political firmament. It is the polar star of the American Constitution. Let us guard it with devotion and vigilance as the vestal and very vital flame of liberty, and transmit it unimpaired and sacred through generation and generation to our latest posterity. Stand by the writ forever.

Mr. HURD. I yield ten minutes to the gentleman from Ohio, [Mr. LAWRENCE.]

Mr. LAWRENCE. I will occupy the time in presenting as fully as I can some suggestions which seem to me appropriate to the occasion. I will say a word, in the first place, in reply to the gentleman who has just taken his seat. He seems to suppose we have suspended the writ of *habeas corpus*, or will do so if we refuse to permit the body of Kilbourn to be returned to the court which has issued the writ. He seems not to be aware of the fact that the *habeas corpus* act provides that where a party is in jail under sentence, and that fact appears by the petition, the writ cannot issue.

Mr. JONES, of Kentucky. Yes. But in that case he is held by a court under judicial authority, which we have not.

Mr. LAWRENCE. The gentleman might as well argue that that clause of the statute which denies the right of a judge in certain cases to issue the writ has suspended its privileges, as to say that this House does so when by its sentence it holds a disobedient witness in confinement. This House has no judicial authority, but it has the lawful authority of its privileges and powers to imprison a recusant witness in an authorized investigation as fully as any judicial court. That clause of the Constitution which denies the right to suspend the privileges of the writ of *habeas corpus* has no relation to such case as this. It forbids any exercise of executive power which shall deny the right to the writ, and it equally prohibits Congress or either House, or even a court, to declare generally or in a special case that no writ shall issue where according to law a party may be entitled to it. But if he is not by any law entitled to a writ, then there is no privilege to be suspended. A party lawfully imprisoned in execution by an authorized and lawful sentence was never in any country en-

titled to the writ, and a denial of it suspends no privilege he is entitled to. When a party has had his trial, his "day in court," his rights are *res adjudicata*, and as to him there is no privilege of the writ. The constitutional provision against suspending the writ therefore does not apply or have reference to imprisonment by virtue of a sentence of the House no more than it does to a sentence to imprisonment after a fair trial in a judicial court. So much, then, for that question.

Mr. JONES, of Kentucky. Will the gentleman allow me to ask him a question?

Mr. LAWRENCE. I would if I had time; but this is so limited that I cannot yield to my friend as I could wish to do if I had sufficient time.

I now proceed to consider the question more immediately before us. There is danger that in the excitement of the hour we may lose sight of the real question. The real question is, can a judicial court release a witness from imprisonment who is held by order of the House for refusal to testify in an investigation which the House is making in a matter clearly within its jurisdiction? I say not. And having no power to release, it cannot interfere with the business of the House by writ of *habeas corpus*.

Among all the cases which have been cited by gentlemen on either side of this House, there has not yet been one where any court ever did reverse a sentence of imprisonment by a legislative body.

Mr. GARFIELD. In the Emery case which I quoted on Saturday, volume 107 Massachusetts Reports, page 172, the court discharged the prisoner, who had been sentenced by the Massachusetts house of representatives to twenty-five days' imprisonment.

Mr. LAWRENCE. I had not finished the sentence I was uttering. There never has been a case where a court discharged a person confined under sentence of imprisonment by a legislative body, except in some cases where the constitution limited the power to imprison to *enumerated specific* cases, and where the imprisonment was outside of these, and so unauthorized. But, Mr. Speaker, that is not the kind of jurisdiction we are now exercising. The question we are to decide now is whether in this case, where we are exercising an acknowledged jurisdiction under that clause of the Constitution which gives Congress the power to legislate in reference to the District of Columbia "in all cases whatsoever," where we exercise a *general jurisdiction*—a jurisdiction not *limited* by enumeration or specification—whether in such case as that a judicial court can inquire into and reverse a sentence of imprisonment which this House may pronounce. I say in such case as that no court has ever claimed to exercise any right to interfere with an imprisonment ordered by a legislative body. This precise question, Mr. Speaker, has been decided in the case of Passmore Williamson, which will be found in 26 Pennsylvania State Reports, and from which I will read a single sentence. The learned judge in delivering the opinion in that case says:

> The conviction of contempt is a separate proceeding and is *conclusive* of every fact which might have been urged on the *trial for contempt*, and among others *want of jurisdiction to try* the cause in which the contempt was committed.

That authority is backed up and sustained by the decision of the King's Bench in the case of Lord Shaftesbury, tried in 1675, and which will be found reported in 6 Howell's State Trials, 1269. And there are numerous other cases, all bearing upon the same question and resulting in the same conclusion, which will be found referred to in May's Parliamentary Law, on pages 77 and 78. (1 Freeman, page 153; 1 Modern, page 144; 3 Keble, page 792; Queen *vs.* Patty, 2 Lord Raymond, page 1109; Salkeld, page 503, and numerous other cases.) I will not stop to read these cases, but will content myself simply by referring to them as authorities which sustain the right of a legislative body to imprison for contempt in the exercise of its legislative powers, and which deny the right of any court to take from the custody of the sergeant-at-arms a person held under the legislative sentence.

But a good deal of stress has been laid on the case of Burnham *vs.* Morrissey, 14 Gray, 226; and my colleague [Mr. GARFIELD] has referred to another case in 107 Massachusetts Reports.

In the case reported in 14 Gray the learned judge who pronounced the opinion undoubtedly did say that one branch of the Legislature of Massachusetts was not the exclusive judge of the cases in which it could imprison for contempt. But why? Because the constitution of Massachusetts expressly enumerated the cases in which either branch of the Legislature might imprison for contempt, and by that enumeration excluded the right of the house to imprison in any other class of cases.

Now, sir, if this House were exercising a jurisdiction under a constitution which enumerated the cases in which it might imprison for contempt, and if the House had gone outside of that enumeration, then I would say at once that the courts might make inquiry to ascertain whether we had kept within the enumerated cases prescribed by the Constitution, in which the House had power to imprison for contempt.

But here, as I have already remarked, we are not exercising a limited jurisdiction, but a general unlimited jurisdiction given by that clause of the Constitution which confers legislative powers as to the District of Columbia. If we were exercising a jurisdiction under the legislative powers given under that other clause of the Constitution which says that "all legislative powers herein granted shall be vested in a Congress," and if we were attempting to exercise jurisdiction in a case in which the Constitution had given Congress no power or had excluded its exercise, then I would concede that the question would be a very different one from that which is now before the House. There are limitations in favor of liberty and personal rights imposed on Congress and each House of Congress by the old amendments to the Constitution. If the House were clearly transcending its powers, or invading personal liberty or the liberty of the press outside of its acknowledged jurisdiction, the courts might then well inquire whether we were exercising a jurisdiction authorized by the Constitution, or whether we had stepped outside of it and gone beyond the authority under which we were acting, in undoubted acts of tyranny *ultra vires*.

Mr. CONGER. Does the gentleman claim that this power given to Congress is vested equally and absolutely in either branch of Congress.

Mr. LAWRENCE. O, the power to punish for contempt is a power which is given to each branch of Congress.

Mr. CONGER. Where is that power given in the Constitution?

Mr. LAWRENCE. It is one of the incidental powers of each branch of Congress, as has been abundantly shown in this debate and as has been determined by the Supreme Court. When a question of this kind has been determined by the Supreme Court, it is at least some evidence that it has been rightly determined. The authority for this incidental power is very well stated by the great commentator Kent, who says:

> Whenever a power is given by a statute—

And the same is true of a constitution—

> everything necessary to the making of it effectual or requisite to attain the end is *implied*. "*Quando lex aliquid consedit, consedere videtur et id, per quod devenitur ad illud.*" (1 Kent's Commentaries, page 464.)

I had supposed that question had long since been set at rest.

Before I leave this branch of the subject I may say that the case of Burnham *vs.* Morrissey, 14 Gray, 226, is authority on another point. In that case it was held that in the investigation before a legislative committee—

> It is no ground for the refusal of a witness to produce books or papers that they are private. (18 Howard, 71; Paschal's Const., note, 252, 258.)

My colleague [Mr. GARFIELD] on Saturday referred to the protection afforded by some clauses of the amendments to the Constitution. This case in Massachusetts was decided under a constitution giving all the guarantees of the national Constitution, and yet the Massachusetts court said that one branch of the Legislature could require the production of private books or papers.

I pass on to say a few words on another branch of this subject.

It is urged that the whole power of *punishment* has been transferred to the courts by section 104 of the Revised Statutes, which renders the witness liable to indictment as for a crime in a criminal court for his refusal to testify.

The Constitution says—

> No person shall be held to answer for * * * *crime* unless on a presentment for indictment of a grand jury, * * * nor shall any person be subject for the same offense to be twice put in jeopardy.

Now, a *contempt* is not a *crime*. The courts punish for contempts without indictment. It has never been objected that such punishment is unauthorized. So here, this House has not imprisoned Kilbourn for *crime*. The gentleman from Virginia [Mr. TUCKER] has argued that the imprisonment is *detention*, not *punishment*. However that may be, it is not detention or punishment for *crime*. This House has not abdicated its jurisdiction, then, by authorizing an indictment for the *wrong to the public*, which is the indictable crime.

But there has been much discussion as to the effect of the statute relating to *habeas corpus*. It has been urged that the *habeas corpus* act requires the production of the body of Kilbourn. If so it is a mockery of the law and an insult to the court for this House to *order* what the statute requires. But neither section 758 of the Revised Statutes, which requires the production of the body, nor section 752, which authorizes judges "to grant writs of *habeas corpus*," has any relation to this case. My colleague [Mr. HURD] on Saturday showed us that the writ does not issue except by force of a statute. If the court had not so decided, I would say it would issue as a common-law right and by a judge *ex virtute officii*. But the court has so decided. Now, when the Constitution was adopted, this House immediately by the *lex et consuetudo parliamenti* had the right to imprison for contempt. No statute was required; none was ever passed. This was common parliamentary law. That is just as much law and as forcible law as a statute. If it be repealable at all it can only be done by a statute or the usage of the House.

On all questions of personal liberty it and the *habeas corpus* statute are laws *in pari materia*. Now the *habeas corpus* act was not intended to repeal the common parliamentary power of imprisonment for contempt.

Kent, in commenting on the rule that "acts *in pari materia* and relating to the same subject are to be taken together," says—

> That a code of statutes relating to one subject was governed by one spirit and policy and was intended to be consistent and harmonious in its several parts and provisions. (1 Kent, page 464.)

And he proceeds to say:

> "Statutes are likely to be construed *in reference to the principles of the common law; for it is not to be presumed that the Legislature intended to make any innovation upon the common law* further than the case absolutely required." This has been the language of the courts in every age; and when we consider the constant, vehe-

ment, and exalted eulogy which the ancient sages bestowed upon the common law as the perfection of reason and the best birthright and noblest inheritance of the subject, we cannot be surprised at the great sanction given to this rule of construction. (1 Kent, page 464.)

If by any fair construction of the *habeas corpus* act it is possible to retain in force the common parliamentary law, it must be done. This debate has shown abundant reasons for saying the statute does not apply to imprisonment by order of this House. The *lex parliamenti* then remains in force. By this law, as said by Chief Justice De Grey, an adjudication of this House for a contempt "is a *conviction*, and their commitment in consequence is *execution;* and no court can discharge."

By that common law which regulates courts, and parliamentary law which protects this House, a court has no jurisdiction by *habeas corpus* to reach a commitment in execution. This law has not been repealed. I know the danger of this power to imprison; but the Supreme Court of the United States has it with no authority to review its decisions, and no law to limit the time of imprisonment. There is a power to impeach the justices for an *abuse* of authority, and the members of this House can be reached by popular elections; but no law has said that any court can revise or reverse or defeat the adjudications of the House in the exercise of powers given by the Constitution. Where is the law that gives any court revisory power? There is danger, too, of permitting an interference with this power. If it can be annihilated, corruption can fester all over the land unchecked by investigation, public plunderers may well hold a jubilee, and the vilest mercenaries and criminals will escape impeachment. The whole people will bow to the "one-man power" of a single judge, and this land will cease to be a republic and become an autocracy.

This case will settle the practice of the House. I will bow to its decision as I do to that of courts. When the law is settled I will not disturb but will obey it and follow in the line of precedents. But I admonish the House that momentous consequences and results of the gravest character depend upon the deliberations and decision of this hour.

Mr. EAMES. I have prepared some remarks on this question, but having no opportunity to deliver them I ask unanimous consent that they be printed in the RECORD as a part of the debates.

There was no objection, and the leave was granted. [See Appendix.]

Mr. YOUNG. I desire to make the same request.

There was no objection, and the leave was granted. [See Appendix.]

Mr. W. B. WILLIAMS. I also have prepared some remarks on this question, and I ask leave to have them printed as a part of the proceedings.

There was no objection, and it was granted. [See Appendix.]

Mr. HURD. After the thorough and exhaustive discussion of the proposition involved in the report presented to this House by the Committee on the Judiciary I would regard it as trespassing upon the time of the House to say anything more upon this subject, were it not for the fact, that during the progress of the discussion several propositions have been maintained on the part of those who advocate the minority report to which I think it proper that an answer should be now given.

It has been urged that there has been no precedent for this action of the House as proposed by the report of the majority of the committee in the history of the Congress of the United States. I say to the House that a precedent upon a similar subject, and in the line of the precise doctrine as maintained by the majority of the committee, was made in the last Congress in the Irwin case. When the vote was taken on the first day in that case it was determined that the body should not be delivered by the House to the custody of the court. On the second day another vote was taken which required the Sergeant-at-Arms to produce the body before the court and yet to retain custody of that body. The subsequent order, under a decision of the Supreme Court of the United States, was absolutely null and void. The Sergeant-at-Arms the moment the body was delivered to the court could by no possibility have had any authority over it at all, consequently the action of the House on the second day in revising and reviewing the action of the House on the first day did not change the principle then asserted, then supported by a large majority of the republican members of the House, that the House was not bound when the return was made to surrender the custody of the body.

It has been objected in the progress of the argument that we were anticipating the judgment of the court, and were insisting that the court when it comes to decide the questions of law involved will decide against the authorities and precedents and discharge the prisoner. We are not anticipating the action of the court. It is not the action of Judge Cartter that will release the prisoner if we surrender him. It is our own action that will release him. By delivering him to the court he passes from our control to that jurisdiction; he is discharged by our own act from custody when he has been adjudged in contempt of the authority of the House. The judge himself has made no decree upon the subject at all. It is asserted that a precedent in Massachusetts and one in Wisconsin as to the power of the courts settled the doctrine, so far as State authorities and State Legislatures are concerned, that there can be an interference with the authority of the House by the judiciary. As to the case in Massachusetts, it has been well said by the gentleman from Ohio that it was decided because of a peculiar provision of the constitution of Massachusetts. And in addition to that I desire the House to recollect that the distinguished gentleman who delivered that opinion stood upon the floor of this House last session and advocated the very doctrine on this point that the majority of the committee have reported. I say that does not imply that that eminent gentleman changed his opinion, but it does show that the decision made in Massachusetts was not inconsistent with the proposition maintained here to-day by the majority of the committee.

As to the case in Wisconsin I desire to call the attention of the House to the fact that from the earliest days of their organization the courts of Wisconsin have been out of the line of precedent on the subject of the writ of *habeas corpus*. It was from the supreme court of the State of Wisconsin that the case of Ableman *vs.* Booth went to the Supreme Court, and they still insist in their courts in denying doctrines that have been asserted by the highest tribunals in the land; and if authority upon this subject may be found in the decisions of Wisconsin against the proposition which the committee maintain it is not in the line of precedents established either in the courts of the United States or in the courts of other States.

Underlying the arguments of the gentlemen who have opposed the proposition of the majority of your Committee on the Judiciary there may be said to be four fallacies. One is that the writ of *habeas corpus* is used at all times as a matter of right to release from imprisonment. Sir, the writ of *habeas corpus* possesses no such efficacy. In the statute of Charles II several plain exceptions were made to the general rule. Where parties were held under a warrant plainly charging either treason or felony, or where they were held in execution upon a sentence, the writ of *habeas corpus* could not issue, and, if it did issue, the court, upon ascertaining the facts, were bound to remand the prisoner.

What writ of *habeas corpus* is it that gentlemen are speaking of, to which they attribute such unbounded power? Not the writ of *habeas corpus* of England, not the writ of *habeas corpus* of our country, but a writ of *habeas corpus* which they have imagined for themselves.

The second fallacy is that a refusal to produce the body is a disobedience of the writ. It has never been so regarded. From the beginning a refusal to surrender the body accompanied by a proper return of the writ was regarded as an obedience to the writ in certain exceptional cases. If this case be within the exceptions, then we do not disobey the writ by refusing to return the body. As I showed the other day, this case is one within the exceptions.

Mr. JONES, of Kentucky. Right here, if the gentleman will allow me.

Mr. HURD. I have already yielded the gentleman ten minutes of my time, and I would be very much obliged to him not to interrupt me now.

The third fallacy which underlies these arguments is that the jurisdiction as asserted by the Committee on the Judiciary denies to the court in any case the right to inquire into the cause of the commitment of a person who has been ordered into confinement by the authority of this House. Now I do not believe that any gentleman has maintained any such proposition. We recognize the power of the court to issue the writ. We recognize the power and jurisdiction of the court to inquire as to the process issued by this House by which this person is confined. When that power has been reached, when that doctrine has been recognized, then we have recognized all the power the court possesses or that it can rightfully claim to possess. And when the process is exhibited, as I showed by the authorities the other day, the only inquiry for the court is, is it of legal efficacy now; is it of vital force now? If it be, then the matter is determined, provided this House has the power to pass judgment in cases of contempt.

As the Supreme Court of the United States has decided, the court of this District, which is bound by that authority, upon learning the fact of the process of this House in adjudication of this individual in contempt, and that the House is so holding him for contempt, must cease further inquiry. We do not deny the jurisdiction of the court. We recognize its jurisdiction to issue the writ and to inquire into the process of the House. But when that is done its power is exhausted.

Mr. BLAIR. Will the gentleman allow me——

Mr. HURD. The gentleman will pardon me, but I cannot allow myself to be interrupted now; I have not time.

The fourth fallacy of the arguments of gentlemen is that the judges of the supreme court of this District possess a revisory or appellate power over the decisions of this House. It is not a proposition that the Supreme Court of the United States or the supreme court of the District of Columbia has this power, but that one of the judges of the District court at chambers possesses this power.

It is the Congress of the United States that creates the court; it is the Congress of the United States that gives efficacy to the writ of *habeas corpus*. Although the Constitution of the United States provides that the writ of *habeas corpus* shall not be suspended except in certain cases, yet the Supreme Court of the United States has determined that without an act of Congress there is no writ of *habeas corpus*. Therefore can it be possible that this Congress that created the courts, this Congress that made the writ of *habeas corpus* efficacious in the United States—can it be possible that the body that gives life to both, that possesses the power to determine in reference to the wisdom and propriety of all legislation in regard to them, may have all

its most necessary authority taken away by the one and through the interposition of the other?

In addition to what have been suggested as reasons for the adoption of the report of your committee, I suggest this additional reason for the consideration of the House: The time of the House ought not to be consumed in the discussion of these important questions which are liable to arise in cases similar to the present. It is important that there should be a final adjudication upon this question by the Supreme Court of the United States. And, while I am not willing to assert, as a proposition of law, at this time, that even the decision of the Supreme Court of the United States would be in all respects binding upon this House, as though we were a subordinate court and that was a court which possessed revisory and appellate jurisdiction, yet I do believe that this House would be governed by the decision of that august tribunal as to what were the limitations of its powers.

Now, the only way in which this question can be brought before the Supreme Court of the United States is by the course recommended by the majority of your committee. If the report of the minority should be adopted and the custody of the prisoner given to the court under this writ, he will be either remanded or discharged. If he be remanded, then there will be no question to go to the Supreme Court of the United States. If he be discharged it is not such a final judgment as would authorize a bill of exceptions or a writ of *certiorari* in order that the Supreme Court can revise the action of this House.

But suppose that we retain the custody of the prisoner, in either case we obtain a decision of the question. Either the judge orders our Sergeant-at-Arms into custody, or else he decides that the return is sufficient. If he decides that the return is sufficient without the body, that is all that is desired. If he orders the Sergeant-at-Arms into arrest then the whole matter can be brought before the Supreme Court of the United States, and we can, at a very early day, have an adjudication by which our conduct hereafter may be governed.

It has been objected that the power of this House has been taken away by the passage of the act last year giving to the courts of this District jurisdiction over offenses of this sort and enabling an indictment to be found against a man who is adjudged to be in contempt of the authority of the House. As I said the other day, that provision is merely cumulative. It is no objection to our power. We have not declared that we give it up; we insist upon exercising it; and we say to the courts, "You may punish likewise."

Why, Mr. Speaker, in the view which has been maintained by the majority of this committee, there is no object to be accomplished in this case by the delivery of the body. Under all the established authorities, nothing can be effected by such delivery. The object for which the writ of *habeas corpus* was devised was to relieve from unlawful imprisonment; and the body is given up, that the court may be enabled either to admit to bail or to discharge. But where under the authorities the imprisonment is found to be a lawful imprisonment, where the return will show to the court that it is a lawful imprisonment, then the body need not be produced, for the reason that the production of the body is not necessary to enable the court to exercise the jurisdiction and power which it properly possesses.

I deprecate the political allusions which have been made in this debate by the gentleman from Maine, [Mr. FRYE,] and I feel called upon in concluding to say a word or two upon that point. He said he had heard members of the democratic party at the last session maintain the right of *habeas corpus;* he referred to the grand record made by the democratic party during the war in vindicating the right of civil liberty and denying the power of the Executive to suspend the writ of *habeas corpus* and of the Congress of the United States to delegate that power to the President. That part of the record of the democratic party I am proud of and glory in to-day. For one, I would rather have been associated with an organization which devoted itself to the preservation of the civil liberty of the citizen by maintaining the great writ of *habeas corpus* during those hot and perilous times than to have been associated with a party whose victories have come through blood.

But, Mr. Speaker, the democratic party in denying this power to the President of the United States to suspend the writ of *habeas corpus* did not commit the party to any construction of the statute upon the subject of *habeas corpus*. It did not declare in its conventions what constituted a proper return to the writ of *habeas corpus*. The democratic party has never declared that it was necessary to present the body at all times with the writ. They simply maintained the efficacy of the writ; they declared that the power to suspend it was vested in the Congress of the United States; that it could not be suspended as the Executive authority arbitrarily might desire or direct. And we who are making this report from the majority of the committee are maintaining here on this floor the writ of *habeas corpus* as thoroughly and as completely as we maintained it during the time of the war when we were asserting that this Congress alone had power to pass a law authorizing its suspension.

[Here the hammer fell.]

The SPEAKER *pro tempore*. The time allowed for debate has expired.

Mr. HURD. With the permission of the House I wish to say that among members of the House who agree upon the general proposition there is a difference of opinion as to the particular course that should be pursued. I am inclined to think that harmony of action can be better promoted by the adoption of the amendment proposed by the gentleman from Virginia [Mr. TUCKER] than by adopting directly the report of the committee. The whole object sought to be accomplished by the adoption of the proposition of the committee——

Mr. CONGER. I object to further debate.

The SPEAKER *pro tempore*. The question is first upon the amendment of the gentleman from Virginia, [Mr. TUCKER,] which the Clerk will read.

Mr. HURLBUT. That is an amendment to the report of the majority of the committee.

The SPEAKER *pro tempore*. It is.

Mr. FRYE. Does not the question on the substitute come up first?

The SPEAKER *pro tempore*. The question on the substitute will be taken after the amendment submitted by the gentleman from Virginia is voted on. This is a proposition to amend the original resolution. The Clerk will report it.

The Clerk read as follows:

Strike out all after the word "Kilbourn" where it occurs before the word "therefore," at the end of the preamble, and insert the following:

And whereas the facts stated in the petition and complaint of said Kilbourn present the question whether the said writ could lawfully and properly be issued, and whether the same was not therefore improvidently awarded: Therefore,

Be it resolved, That the Sergeant-at-Arms of this House be directed to appear by counsel before the said court, and make a motion to quash or dismiss said writ, or take such other procedure as he shall be advised is proper to raise the question of the legality and propriety of the issue of said writ upon the facts stated in the petition or complaint, and as preliminary to any return to the same; and in the mean time he is directed to retain the custody of the body of said Kilbourn, and not to produce it under the order of said writ without the further order of this House.

The SPEAKER *pro tempore*. The question is on the amendment just read by the Clerk.

Mr. GARFIELD. That settles nothing.

The question being taken, the amendment was not agreed to; there being—ayes 86, noes 149.

The question then recurred on the following, offered by Mr. LYNDE, as a substitution for the resolution reported by the committee:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of *habeas corpus* in the case of Hallet Kilbourn that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Kilbourn before said court when making such return as required by law.

Mr. KASSON demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 165, nays 75, not voting 50; as follows:

YEAS—Messrs. Adams, Ainsworth, Anderson, Bagby, George A. Bagley, John H. Bagley, jr., John H. Baker, William H. Baker, Ballou, Banning, Bass, Beebe, Bell, Blaine, Blair, Blount, Boone, Bright, William R. Brown, Horatio C. Burchard, Samuel D. Burchard, William P. Caldwell, Campbell, Candler, Cason, Caswell, Cate, John B. Clark, jr., of Missouri, Cochrane, Conger, Cook, Crapo, Crounse, Culberson, Cutler, Danford, Darrall, Davy, De Bolt, Denison, Dobbins, Douglas, Dunnell, Durand, Durham, Eames, Egbert, Evans, Farwell, Faulkner, Felton, Fort, Foster, Franklin, Freeman, Frost, Frye, Garfield, Goodin, Haralson, Hardenbergh, Henry R. Harris, Hartridge, Hatcher, Hathorn, Hays, Hendee, Henderson, Hoge, Hopkins, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Jenks, Thomas L. Jones, Kasson, Kelley, Kimball, Knott, Lapham, Leavenworth, Luttrell, Lynch, Lynde, Edmund W. M. Mackey, L. A. Mackey, Magoon, MacDougall, McClary, McDill, McFarland, McMahon, Meade, Miller, Milliken, Mills, Monroe, Morgan, Norton, O'Brien, Oliver, O'Neill, Packer, Page, Parsons, Phelps, Pierce, Plaisted, Poppleton, Potter, Powell, Pratt, Purman, James B. Reilly, Rice, William M. Robbins, Roberts, Robinson, Sobieski Ross, Rusk, Sampson, Savage, Sayler, Scelye, Singleton, Sinnickson, A. Herr Smith, William E. Smith, Strait, Stevenson, Stone, Stowell, Tarbox, Thompson, Thornburgh, Throckmorton, Martin I. Townsend Tucker, Tufts, Van Vorhes, John L. Vance, Robert B. Vance, Wait, Waldron, Charles C. B. Walker, John W. Wallace, Welling, Walls, Ward, Warren, White, Whiting, Wigginton, Willard, Alpheus S. Williams, Charles G. Williams, William B. Williams, Willis, Wilshire, James Wilson, Woodburn, Woodworth, and Young—165.

NAYS—Messrs. Ashe, Atkins, Banks, Barnum, Bland, Bradford, Buckner, Cabell, John H. Caldwell, Caulfield, Chapin, John B. Clarke of Kentucky, Clymer, Collins, Cowan, Cox, Davis, Dibrell, Ellis, Forney, Fuller, Gause, Gibson, Glover, Goode, Andrew H. Hamilton, Robert Hamilton, Hancock, John T. Harris, Harrison, Hartzell, Henkle, Hereford, Goldsmith W. Hewitt, Hill, Hoar, Hooker, House, Hunton, Hurd, Kehr, Lamar, Lawrence, Lewis, Lord, Maish, Metcalfe, Money, Morrison, Neal, New, John F. Philips, Piper, Randall, Rea, Reagan, Riddle, John Robbins, Scales, Sheakley, Skemons, Sparks, Springer, Stenger, Teese, Terry, Thomas, Turney, Waddell, Gilbert C. Walker, Erastus Wells, Wike, James Williams, Jeremiah N. Williams, and Yeates—75.

NOT VOTING—Messrs. Blackburn, Bliss, Bradley, John Young Brown, Burleigh, Cannon, Chittenden, Eden, Ely, Gunter, Hale, Benjamin W. Harris, Haymond, Abram S. Hewitt, Holman, Frank Jones, Joyce, Ketchum, King, Franklin Landers, George M. Landers, Lane, Levy, Morey, Mutchler, Nash, Odell, Payne, William A. Phillips, Platt, Rainey, John Reilly, Miles Ross, Schleicher, Schumaker, Smalls, Southard, Swann, Washington Townsend, Alexander S. Wallace, Walsh, G. Wiley Wells, Wheeler, Whitehouse, Whitthorne, Andrew Williams, James D. Williams, Benjamin Wilson, Alan Wood, jr., and Fernando Wood—50.

So the amendment was agreed to.

During the vote,

Mr. CUTLER stated that his colleague, Mr. ROSS, was detained from the House on account of a death in his family.

Mr. JAMES B. REILLY stated that his colleague, Mr. WOOD, was absent by leave of the House.

Mr. MUTCHLER stated that he was paired with his colleague, Mr. JOHN REILLY, who was absent from the House on account of sickness, and who, if present, would vote in the negative, while he would vote in the affirmative.

Mr. COX stated that Mr. HOLMAN, who was absent on account of sickness, would, if present, vote in the negative.

Mr. MILLIKEN stated that his colleague, Mr. JOHN YOUNG BROWN, was absent on account of sickness in his family.

Mr. KNOTT stated that his colleague, Mr. BLACKBURN, was absent from the House on account of illness.

Mr. WHITEHOUSE stated that he was paired with his colleague, Mr. PLATT, who was absent on account of illness in his family, and who, if present, would vote in the affirmative, while he would vote in the negative.

Mr. CANNON, of Illinois, stated that he was paired with Mr. WELLS, of Mississippi, who, if present, would vote in the affirmative, while he would vote in the negative.

Mr. HENDEE stated that his colleague, Mr. JOYCE, had been called to his home by reason of the death of his mother, and that, if present, he would vote in the affirmative.

Mr. WIGGINTON stated that Mr. LANE was detained from the House by sickness.

The vote was then announced as above recorded.

The report of the committee was then adopted as amended by the substitution of Mr. LYNDE's proposition.

Mr. KELLEY moved to reconsider the vote by which the report as amended was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PROCEEDINGS IN THE TRIAL OF IMPEACHMENT.

Mr. RANDALL, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That in the future proceedings of the impeachment trial of W. W. Belknap, late Secretary of War, the House appear, in the prosecution of said impeachment before the Senate sitting as a court of impeachment, by its managers only.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. WHEELER until next Thursday; to Mr. BRADLEY for two weeks; to Mr. ROSS, of Pennsylvania, indefinitely; to Mr. EDEN for one week; to Mr. PHILLIPS, of Kansas, for ten days; and to Mr. JOYCE for ten days.

UNION PACIFIC RAILROAD.

Mr. McCRARY, by unanimous consent, introduced a bill (H. R. No. 3138) to create a sinking fund for the liquidation of Government bonds advanced to the Union Pacific Railroad; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

CANCELLATION OF MORTGAGES.

Mr. McCRARY also, by unanimous consent, introduced a bill (H. R. No. 3139) in relation to the cancellation of mortgages; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

And then, on motion of Mr. CONGER, (at five minutes after six o'clock p. m.) the House adjourned.

PETITIONS, ETC.

The following memorials, petitions, and other papers were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. DIBRELL: The petition of John L. Divine and heirs of William E. Kennedy, deceased, for compensation for damages by reason of a breach of a mail-contract made with Divine & Kennedy, to the Committee of Claims.

By Mr. DOUGLAS: The petition of William K. Lee, for compensation for three thousand pounds of bacon taken from him by United States marines in April, 1865, to the Committee on War Claims.

Also, the petition of Thomas E. Pullin, for the establishment of a post-route from Farmer's Fork to Warsaw, Richmond County, Virginia, to the Committee on the Post-Office and Post-Roads.

By Mr. DOBBINS: The petition of Eliza Herzberger, for a pension, to the Committee on Invalid Pensions.

By Mr. DURHAM: Papers relating to the petition of Daniel Suddath, for a pension, to the Committee on Revolutionary Pensions.

By Mr. GLOVER: The petition of 16 envelope manufacturers, printers, stationers, lithographers, and envelope dealers of Hannibal, Missouri, against the practice of the Government through the Post-Office Department in manufacturing and furnishing envelopes, newspaper-wrappers, and postal cards at or below their cost to the Government and delivering the same through the mails to all parts of the country free of charge, at a loss to the Post-Office Department of the cost of transportation, to the Committee on the Post-Office and Post-Roads.

By Mr. HARDENBERGH: The petition of citizens of Northport, New York, against compulsory pilotage, to the Committee on Commerce.

Also, the petition of citizens of New London, Connecticut, of similar import, to the same committee.

Also, the petition of citizens of Belfast, Maine, of similar import, to the same committee.

By Mr. JACOBS: Papers relating to the establishment of a post-route from Skookum Church, by way of Mound Prairie, to Oakville, Washington Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. LEAVENWORTH: The petition of R. N. Gere and others, that the present tariff laws remain unchanged, to the Committee of Ways and Means.

By Mr. LUTTRELL: The petition of George H. Wells, for compensation for the use and value of the steamer Southern Merchant, to the Committee on War Claims.

By Mr. LYNDE: The petition of G. A. Mansfield and 500 other citizens of Milwaukee, for the unconditional repeal of the resumption act and for all money to be issued by the Government, to the Committee on Banking and Currency.

By Mr. MACKEY, of Pennsylvania: The petition of citizens of Union County, Pennsylvania, for a post-route from Mifflinburgh to White Springs, Pennsylvania, to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Centre County, Pennsylvania, against any change in the tariff laws, to the Committee of Ways and Means.

By Mr. MACDOUGALL: The petition of envelope dealers in Auburn, New York, against the Post-Office Department manufacturing, selling, and printing envelopes, newspaper-wrappers, and postal cards at or below their cost, which, including the cost of transporting and handling, amounted in the year 1875 to a loss to the Government of $4,925,736, to the Committee on the Post-Office and Post-Roads.

By Mr. MAGOON: Remonstrance of Hon. J. W. Rewey and 38 other citizens of Iowa County, Wisconsin, against reducing the tariff on lead, zinc, and flaxseed, to the Committee of Ways and Means.

Also, the petition of Joseph Bennett and Samuel Hoskins and 148 others of Iowa County, Wiseonsin, against reducing the tariff on lead and zinc, to the same committee.

By Mr. NORTON: The petition of citizens of Salamanca, New York, for the passage of House bill 2158, amending act of February 19, 1875, relating to sale of lands of Seneca Indians, to the Committee on Indian Affairs.

By Mr. OLIVER: The petition of 220 citizens of Northwestern Iowa, that the law be so changed as to authorize the junction of the McGregor and Missouri River Railroad with the Sioux City and Saint Paul Railroad on or near the forty-third parallel of north latitude, to the Committee on Railways and Canals.

By Mr. RANDALL: The petition of envelope manufacturers, printers, stationers, lithographers, and other dealers, stating their objections to the existing mode of furnishing stamped envelopes to the public, to the Committee on the Post-Office and Post-Roads.

By Mr. RICE: The petition of J. E. O'Sullivan, for an increase of pension, to the Committee on Invalid Pensions.

By Mr. RIDDLE: The petition of Thomas O. Tilghman, for pay for property taken and used by the United States Army, to the Committee on War Claims.

Also, the petition of Z. A. Lyon and others, for a post-route from Hartsville to Austin, by way of Lockport, Tennessee, and for the change of the name of the post-office at Lockport to Lyonville, to the Committee on the Post-Office and Post-Roads.

By Mr. ROBBINS, of North Carolina: A paper relating to a post-route from Stony Fork to Elkville, North Carolina, to the same committee.

By Mr. ROSS, of Pennsylvania: Memorial of 22 citizens of Potter County, Pennsylvania, concerning the abolition of the Presidency, to the Committee on the Judiciary.

Also, memorial of 22 citizens of Potter County, Pennsylvania, concerning the abolition of the United States Senate, to the same committee.

Also, the petition of citizens of Williamsport, Pennsylvania, against the reduction of the effective force of the Patent Office, to the Committee on Patents.

Also, the petition of 26 citizens of Lycoming County, Pennsylvania, against any change in the tariff laws, to the Committee of Ways and Means.

Also, remonstrance of citizens of Tioga County, Pennsylvania, manufacturers and printers, against the manufacture by the Post-Office Department of envelopes, newspaper-wrappers, &c., at a loss to the Government, to the Committee on the Post-Office and Post-Roads.

Also, the petition of 60 citizens of Potter County, Pennsylvania, that one hundred and sixty acres of land be granted to soldiers who served thirty days during the late war and $200 to enable them to settle the same, to the Committee on Military Affairs.

Also, memorial of 22 citizens of Pennsylvania, concerning the revocability of the people's legislative representatives and ratification by the people of all important legislative enactments, to the Committee on the Judiciary.

By Mr. VANCE, of Ohio: The petition of Joseph Crabtree and 42 other workingmen of Jackson County, Ohio, that the present tariff laws be left undisturbed, to the Committee of Ways and Means.

By Mr. WALDRON: The petition of Henry Romeyn, first lieutenant Fifth United States Cavalry, for a change in the date of his commission, to the Committee on Military Affairs.

By Mr. WALKER, of Virginia: The petition of wholesale liquor dealers of Richmond, Virginia, for the definition of the powers and duties of officers of internal revenue and to further provide for the collection of the tax on distilled spirits, to the Committee of Ways and Means.

By Mr. WELLS, of Missouri: Memorial of the Merchants' Exchange of Saint Louis, that no legislation may be enacted that shall affect the efficiency of the Signal Service, to the Committee on Appropriations.

By Mr. WILLARD: Remonstrance of Rufus H. Emerson and 19 other citizens of Jackson, Michigan, against placing soda and alum on the free list, to the Committee of Ways and Means.